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# Rules of Civil Procedure


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March, 1984



PUBLISHED BY THE MINISTRY OF THE ATTORNEY GENERAL





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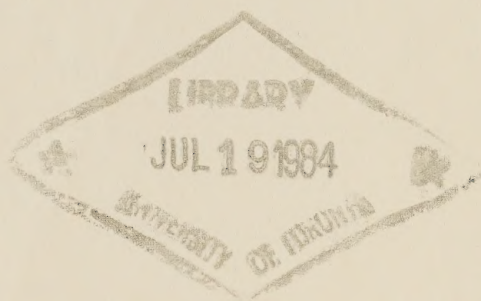
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# STATEMENT OF THE CHAIRMAN OF THE RULES COMMITTEE

This volume contains the Rules of Civil Procedure which have been prepared by a Special Sub-Committee of the Rules Committee and approved by the Rules Committee. These rules represent the final product of the project begun by the Civil Procedure Revision Committee chaired by the late Walter Williston which began its work in 1975 and submitted its report in 1980. The volume also contains a commentary on the rules which forms part of the Special Sub-Committee's report to the Rules Committee and an index which was prepared by the Ministry of the Attorney General.

The Sub-Committee was appointed under the Chairmanship of Mr. Justice Morden in September, 1980. Its members were Mr. Justice Morden, Chairman, Mr. Justice Krever, Mr. Justice Catzman, Senior Judge Coe, C.E. Woollcombe, Q.C. until his untimely death in March of 1983, R.J. Rolls, Q.C., A.B. Doran, Q.C., Professor Garry Watson, W.A.D. Millar, and R.B. Peterson. The Sub-Committee was assisted by a working group comprising Professor Watson, Craig Perkins of the Policy Development Division of the Ministry of the Attorney General, and during the latter part of the Sub-Committee's work, Mr. Justice Catzman and Mr. Justice Morden. In its early days Mr. Allan Rock was a member of the working group but he was not able, because of the demands of his practice, to continue with the group.

It would be remiss of me if I were not to express appreciation for the unremitting work of the Sub-Committee and the working group and particularly for the leadership given by Mr. Justice Morden — the modern day Middleton of these rules.

The Rules Committee intends to make the rules in the approved form following the giving of Royal Assent to the *Courts of Justice Act, 1984* and it is intended that they will come into force on January 1, 1985.

B.J. MacKinnon  
Chairman, Rules Committee

February 29, 1984



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# DESCRIPTIVE COMMENTARY ON THE INNOVATIONS IN THE NEW RULES

What follows is an excerpt from the part of the Report of the Special Sub-Committee on the Rules of Civil Procedure which describes some of the innovations in the new rules. I note two features in it.

First, although the report is dated February 17, 1984, the references to the *Courts of Justice Act, 1984* in it are to the version of this proposed statute, Bill 100, in the form in which it was amended by the Standing Committee of the Legislature on the Administration of Justice on March 5, 1984 following its second reading on November 29, 1983. The amendments did not affect the substance of the report.

Secondly, the method of the citation of the rules in the report is one which describes a provision by its actual unit name, e.g., Rule 1, rule 1.01, subrule 1.01(2), clause 1.01(2)(c), etc. The full catalogue of units is set forth in subrule 1.01(2). The rules themselves, in subrule 1.01(3), provide for an alternative “sufficient” method of reference for use “[i]n a proceeding in a court” which is simpler. A rule and all subdivisions of a rule may be cited as “rule”, e.g., rule 1.01, rule 1.02(2), rule 1.01(2)(c), etc. This simpler method will probably find favour not only in court proceedings but in many forms of writing which refer to the rules.

## GENERAL FEATURES

From their newness alone the Rules of Civil Procedure will have a profound impact on the work of the legal profession and of the Supreme and District Courts. In the early period they will take more time to interpret and apply than the present rules. However, it should be said at the outset that in their fundamental structure and features they do not represent a radical change in the substance of the law of civil procedure in Ontario. Actions will continue to be processed through the following basic stages: (1) commencement; (2) pleadings; (3) discovery; (4) pre-trial; and (5) trial. It is recognized that there is some overlapping between some of these stages.

Also, actions will continue to have as occasional elements the following possible steps or features: (a) interlocutory motions (under the new definition all “motions” are interlocutory); (b) references; (c) assessments of costs (until now called “taxation of costs”); and (d) appeals.

Further, actions are not the only kind of civil proceeding. The other kind will be applications which, until now, have been known as originating motions. The important feature of most applications is that they do not involve any dispute with respect to material facts. See clause 14.05(3)(h) and clause 38.11(1)(b). Since applications are more expeditious and less expensive than actions they, rather than actions, should be resorted to in all cases where they properly lie.

Before specific matters in the rules are discussed certain general features should be mentioned.

The Rules of Civil Procedure are made for and are generally applicable to the Supreme Court and the District Court. See *Courts of Justice Act, 1984*, s. 90 and subrule 1.02(1). The current Rules are entitled “RULES OF PRACTICE AND PROCEDURE

OF THE SUPREME COURT OF ONTARIO MADE BY THE RULES COMMITTEE” and contain a provision that:

These rules and the practice and procedure in actions in the Supreme Court shall, so far as the same can be applied, apply and extend to actions in the county court. (Rule 770.)

For the limitations flowing from “to actions in the county court” see *Re Gallant and Veltrusy Enterprises Ltd.* (1981), 32 O.R. (2d) 716 and the cases referred to in it. See also *County Courts Act*, s. 24 and *Judicature Act*, s. 126 which relate to the applicability of Supreme Court procedure and *Judicature Act* provisions to the county courts.

As far as their structure, pattern and language are concerned the new rules attempt to present the law in a more orderly and functional manner than do the present rules. The order of the new rules is, generally, the same as that of the stages of an action. Each “subject” is dealt with in a separate Rule. The headings and subheadings, which are set forth in the Table of Contents, are important aids to finding a relevant provision. There are many express cross-references in the rules.

These rules are intended to provide a clearer and more comprehensive direction to parties with respect to the steps which must or may be taken to accomplish a desired result. To this end some matters which, until now, were governed by “the practice” (which was unwritten) are now expressly dealt with in a provision. See, for example, the steps for taking out an order provided for in rules 59.03 and 59.04. Also, the language is intended to be simpler and more accurately descriptive of what it is intended to cover than is the case under the current rules. For example, in the rule on reference procedure (Rule 55) we refer throughout to “the referee” rather than to “the master”, which is the term used in the current rules, since not all referees will be masters. The function is, simply, that of referee. A referee is defined in paragraph 23 of rule 1.03 as “the person to whom a reference in a proceeding is directed”.

### THE RULES THEMSELVES

What follows does not purport to be a comprehensive description or exposition of the new rules or of any particular rule. The emphasis will be placed on the more significant new features in our law of civil procedure rather than on any attempt to state the law completely. Accordingly, some rules will not be mentioned at all. It will be of assistance in reading this part of the report to have a copy of the rules beside it because some of the comments are in general terms and do not refer to all of the exceptions or qualifications which may be found in the rules themselves.

### RULE 1 CITATION, APPLICATION AND INTERPRETATION

Subrule 1.01(2), entitled “Subdivision”, sets forth a description of the units, in descending order, which may be found in the rules: Rule; rule; subrule; clause; subclause; and paragraph.

Respecting transitional issues subrule 1.02(2) provides:

These rules apply to a proceeding, whenever commenced, unless the court makes an order under subsection 156(3) of the *Courts of Justice Act*, 1984.

The statutory provision referred to (s-s. 156(3)) reads:

Where a proceeding is commenced before this Act comes into force, on motion, the court in which the proceeding was commenced may order, subject to such terms as are considered just and subject to variation by further order, that the proceeding or a step in the proceeding be conducted under the Acts and rules of court that governed



the matter immediately before this Act comes into force or may make any other order that is considered just.

The rules deal directly with the major transition issue relating to costs and provide that costs for services rendered before they come into force shall be assessed (the term which replaces “taxed”) in accordance with the tariffs in force immediately before they come into force and costs for services rendered after they come into force shall be assessed in accordance with the new tariffs: subrule 1.02(4).

In the definition provision, rule 1.03, note in particular the only two forms of “proceeding” (para. 22) for which provision is made in the rules: an “action” (para. 1) and an “application” (para. 5). Two other provisions should be considered with these. First, subrule 1.02(1), which provides that “[t]hese rules apply to *all civil proceedings* . . . except where a statute provides for some other procedure.” (Emphasis added.) Secondly, rule 14.02, which provides that “[e]very proceeding in a court shall be by action, except where a statute or these rules provide otherwise.” The net effect of all these provisions is that unless a statute or a rule provides that a proceeding may be by application it must be processed as an action. However, with respect to some “actions” (invariably proceedings provided for in a statute) it may be that, by reason of the concluding words in subrule 1.02(1), the governing procedure will bear little resemblance to that for a normal action. Clearly, then, there are no gaps in the basic procedural law which bears on civil proceedings.

It is important to fix in one’s mind the distinction between a “motion” (para. 17) and an “application” (para. 5). An application, as is an action, is a form of proceeding but a motion is a step in a proceeding — whether the proceeding be either an action or an application. Currently we use “motion” and “application” interchangeably.

It might also be noted that not all steps in a proceeding which can result in a decision are motions. In this regard see, for example: (1) status hearings (rule 48.14); (2) pre-trial conferences (Rule 50); and (3) the settlement of an order (subrules 59.04(8)–(14)).

Note that “order”, which in common parlance is a more generic term than judgment, “includes a judgment or decree” (para. 19). This is the opposite approach to that in the current law (see *Judicature Act*, s.-s.1(1) and rule 2(i)) but is in accord with the approach in several other jurisdictions. A “judgment” is “a decision that finally disposes of an application or action on its merits . . .” (para. 15).

Other key definitions, which are discussed in relation to Rule 37 (MOTIONS — JURISDICTION AND APPLICATION), are “court” (para. 7) and “judge” (para. 14).

## **RULE 2 NON-COMPLIANCE WITH THE RULES**

This rule, generally, is intended to minimize the effect of a failure to comply with the rules. (See present rules 185 and 186.) It is intended to do away with the old distinction between nullities and irregularities. All non-compliances with the rules are to be regarded as irregularities and are to be cured by amendment and “only where and as necessary in the interest of justice” may be set aside: subrule 2.01(1). Note particularly subrule 2.01(2) which provides that:

The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

and rule 2.03 which provides that:

The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

In connection with Rule 2 one should also consider the remedial provisions in rule 9.03.

Also, in connection with the purpose of relieving against the rigid application of rule requirements where they may be inappropriate note that throughout the rules there are provisions which make a particular requirement applicable “unless the court orders otherwise.” There are so many of them that there is no useful purpose in listing them, let alone quoting them. One example will suffice:

Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the court orders otherwise. (Subrule 37.09(3))

and it may be noted that the very next quoted provision (subrule 3.03(1)) contains such a qualification.

### **RULE 3 TIME**

The concept of “long vacation” no longer exists. See, however, subrule 3.03(1) which provides that:

Proceedings may be heard throughout the year, except that during July and August and from December 24th to the following January 6th, both dates inclusive, no trial of an action shall be held unless all parties consent in writing or the court orders otherwise.

### **RULE 4 COURT DOCUMENTS**

Note the general provision respecting the contents of affidavits in subrule 4.06(2):

An affidavit shall be confined to the statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except where these rules provide otherwise.

Contrast current rule 292 which provides:

Affidavits shall be confined to the statement of facts within the knowledge of the deponent, but, on interlocutory motions, statements as to his belief, with the grounds therefor, may be admitted.

Exceptions to the general provision in subrule 4.06(2) may be found in subrules 39.01(4) and (5) which are concerned with, respectively, affidavits used on motions and on applications. There are further special provisions respecting affidavits used on motions for summary judgment which enable adverse inferences to be drawn if an affidavit made on information and belief is used rather than one of a person having personal knowledge of the contested facts: rule 20.02.

### **RULE 5 JOINDER OF CLAIMS AND PARTIES**

Clause 5.02(2)(d) enables two or more persons to be joined as defendants or respondents where “damage . . . has been caused to the same plaintiff . . . by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff . . . , and there is doubt as to the person or persons from whom the plaintiff . . . is entitled to relief . . .”.

Note the flexibility provided for by subrules 5.04(1) and (2) respecting misjoinder, non-joinder and parties incorrectly named.

Note also that rule 13.01 (leave to intervene as an added party) also enables a person, on his or her own initiative, to move for an order adding him or her as a party to a proceeding.

Clauses 5.05(c) and (d) provide for new kinds of relief which may be ordered where joinder of claims or parties may unduly complicate or delay a hearing, etc.: relieving a party from attending or compensating a party for having to attend any part of the hearing in which the party has no interest; and staying proceedings against a party on certain conditions.

## **RULE 6 CONSOLIDATION OR HEARING TOGETHER**

This rule is concerned with the case of two or more proceedings pending in the same court. Where the proceedings are in different courts consolidation and related powers may be exercised under s. 120 of the *Courts of Justice Act, 1984*.

## **RULE 7 PARTIES UNDER DISABILITY**

Subrule 7.08(5) contains a comprehensive statement of what is required to be put before the judge on a motion or application for approval of the settlement of a claim of a person under disability. (It will usually be an infant's settlement.) Until now this was governed by a practice that possibly not everyone understood in exactly the same way.

## **RULE 9 ESTATES OR TRUSTS**

Rule 9.02, which is concerned with proceedings against an estate that has no executor or administrator, replaces what has been in the *Trustee Act*, s-ss. 38(5) and (6).

## **RULE 12 REPRESENTATIVE PROCEEDINGS**

This rule does not reflect any significant change in the present law (rule 75) respecting class actions. If the recommendations in the *Report of the Ontario Law Reform Commission on Class Actions (1982)* are adopted this will require the initiative of the Government in the form of a statute.

## **RULE 13 INTERVENTION**

This rule covers two kinds of intervention: (1) as a party and (2) as a friend of the court (one of several examples of English replacing a Latin term, *amicus curiae*) and it is applicable in motion (rule 13.02), trial and appeal contexts as well as on applications. Under the current rules only the Court of Appeal is covered by an intervention rule: rule 504a.

## **RULE 14 ORIGINATING PROCESS**

This is one of the key organizing rules. Rule 14.02, which has already been quoted in the commentary on Rule 1, provides:

Every proceeding in a court shall be by action, except where a statute or these rules provide otherwise.

This does not represent any change in the law. The effect of the provision may be stated as follows. There has to be statutory or rule authority to enable a party to claim relief in an application (until now called an originating motion). Unless such authority exists the relief must be claimed in an action.

The writ of summons as the initiating document in an action is abolished. The standard initiating document will be the statement of claim: subrule 14.03(1). However, by



virtue of subrule 14.03(2), “[w]here there is insufficient time to prepare a statement of claim, an action other than a divorce action may be commenced by the issuing of a notice of action (Form 14C) that contains a short statement of the nature of the claim.” This, in effect, gives a plaintiff thirty additional days (after the notice of action is issued) within which to prepare and file his or her statement of claim: subrule 14.03(3).

It should also be noted at this point that there is nothing in the new rules preserving the specially endorsed writ which is provided for in current rule 33. Aspects of what is now covered by procedures relating to a specially endorsed writ are dealt with in the new rules in subrule 19.04(1) which enables a default judgment to be signed by the registrar in respect of a claim for a debt or liquidated demand in money, the recovery of possession of land, the recovery of chattels, or foreclosure, sale or redemption of a mortgage and in Rule 20 which is concerned with motions for summary judgment. A significant number of current motions in the master’s office are to strike out special endorsements and this change will eliminate these motions.

Rule 14.05 is concerned with applications. For convenience and organizational purposes it contains the following axiomatic provision in subrule 14.05(2):

Where a statute authorizes the commencement of a proceeding by an application to the Supreme Court or District Court or a judge thereof, the proceeding may be brought by application.

It follows this with a provision (subrule 14.05(3)) respecting applications in the Supreme Court:

A proceeding may be brought in the Supreme Court by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is, [(a) . . . (g)]; or

(h) in respect of any matter where it is unlikely that there will be any material facts in dispute.

It will be noted that three kinds of application are referred to in this provision:

- (1) “*where these rules authorize the commencement of a proceeding by application* . . .”

Examples of these are:

- 7.08(3) for the approval of a settlement involving parties under disability where the settlement is reached before a proceeding is commenced in respect of the claim.
- 43.03(1) for an interpleader order.
- 43.05(8) sheriff’s application for an interpleader order.
- 60.13(4) sheriff’s application for an interpleader order (referring to rule 43.05).
- 65.01(1) for the administration of an estate, etc.
- 67.01 for the approval of the sale, etc. of a minor’s property.
- 70.28(1) for variation of a final order for corollary relief.
- 73.05(1) for a stop order.

- (2) “*where the relief claimed is:*” [clauses (a) to (g) follow].

Note the overlap between clause (a) and s. 60 of the *Trustee Act*. Note further that clause (e), at least in part, replaces the *Quieting Titles Act*. See the explanatory note to s. 208 of the *Courts of Justice Act, 1984* (in Bill 100) which repeals the *Quieting Titles Act*.

- (3) “*in respect of any matter where it is unlikely that there will be any material facts in dispute*” [clause (h)].

Reasonable use of this clause would have the effect of reducing the number of disputes which have to be resolved in actions. Its present counterpart, which is worded differently, is rule 612(1)(b). If, on an application it transpires that there are material facts in dispute, resort must be had to clause 38.11(1)(b) which provides that on the hearing of an application the presiding judge may “order that the whole application or any issue proceed to trial . . .” Note that no conditions for the application of clause 38.11(1)(b) are stated in it.

An application is commenced by the *issuing* of the notice of application by a registrar. See subrules 14.01(1), 14.05(1) and 14.07(1). Under the present rules there is no issuing requirement for commencing an originating motion.

Rule 14.10 provides an expeditious procedure to be followed by a defendant who pays the plaintiff’s claim in full to have the action dismissed.

## **RULE 15 REPRESENTATION BY SOLICITOR**

The Rules Committee has the power to make rules in relation to “. . . representation of parties by solicitors . . .” (*Courts of Justice Act, 1984*, clause 90(c)) and it is proposed that it be exercised in rule 15.01 as follows:

- (1) A party to a proceeding who is under disability or acts in a representative capacity shall be represented by solicitor.
- (2) A party to a proceeding that is a corporation shall be represented by a solicitor, except with leave of the court.
- (3) Any other party to a proceeding may act in person or be represented by a solicitor.

## **RULE 16 SERVICE OF DOCUMENTS**

This is another important organizing rule in the sense that frequent reference to it will be required when using other rules which provide for service of documents. Without referring to specific provisions it can be seen that this rule deals with the following kinds, or gradations, of service: (1) personal service; (2) alternatives to personal service; (3) service on a solicitor of record; (4) mailing; (5) substituted service; and (6) *no* service (where an order is made dispensing with service). Note that where it is intended in a particular provision that the provisions of the service rule (Rule 16) are *not* to be engaged the provision will not use the word “serve” but rather, e.g., “give” [a copy] (subrule 48.14(2)), “send” [a draft order to all other parties] (subrule 59.03(1)), “give” [notice . . . by mail] (subrule 60.13(2)) or “mail” [notice of listing for hearing] (subrule 61.08(5)).

The general rule is that an originating process must be served personally or by an alternative to personal service but that no other document need be served personally or by an alternative to personal service unless some specific rule or an order requires personal service or an alternative to personal service: rule 16.01.

There are many provisions in the rules which make special provision for the kind of service required. See, for example, subrule 15.04(2) respecting a motion by a solicitor to be removed as solicitor of record and subrules 64.06(5) and 64.06(9) respecting several kinds of service on particular kinds of defendant in mortgage actions. There are many variations. See, for example, the requirement that certain persons who are to be examined for discovery are to be served with a notice of examination “personally and not by an alternative to personal service”: subrule 34.04(2).

**RULE 17 SERVICE OUTSIDE ONTARIO**

There is discretion in the court to grant leave to serve an originating process or notice of reference outside Ontario in cases which do not fall within any of the classes of case which enable service outside Ontario to be made as of right: subrule 17.03.

There is no longer a right to delay the decision on the lawfulness of service outside Ontario as there now is with the use of the conditional appearance procedure. See rule 17.06. If a question of fact is material on a motion to set aside service outside Ontario the court may grant leave for the adducing of oral evidence: subrule 39.03(3).

The making of a motion to set aside service outside Ontario is not in itself a submission to the jurisdiction of the court over the moving party: subrule 17.06(4).

Service outside Ontario may be set aside on three bases:

- (a) it is not authorized by the rules;
- (b) an order granting leave to serve outside Ontario should be set aside; or
- (c) Ontario is not a convenient forum (*forum conveniens* is another Latin expression which is not continued in the rules) for the hearing of the proceeding. (Subrules 17.06(1) and (2))

There is now (see subrule 17.06(2)) no scope for taking into account considerations in addition to those relating to the issue of convenient forum in exercising a discretion to set aside service outside the jurisdiction in certain cases. See *Singh et al. v. Howden Petroleum Ltd. et al.* (1979), 24 O.R. (2d) 769. Masters have had great difficulty appreciating the nature and scope of this discretion — the exercise of which is to take into account considerations other than those of convenient forum.

There is power in the court to make an order validating service where “the court concludes that service outside Ontario is not authorized by these rules, but the case is one in which it would have been appropriate to grant leave to serve outside Ontario under rule 17.03 . . .” (subrule 17.06(3)).

**RULE 18 TIME FOR DELIVERY OF STATEMENT OF DEFENCE**

In an action the appearance by a defendant is abolished. (A notice of appearance is required for respondents in applications: rule 38.08.) The general rule is that the first document which a defendant is to deliver is a statement of defence: rule 18.01. However, he or she may obtain ten additional days within which to deliver a statement of defence by delivering a notice of intent to defend within the time prescribed for delivery of a statement of defence: rule 18.02.

**RULE 19 DEFAULT PROCEEDINGS**

The structure of this Rule preserves, generally, the existing law. A defendant in default is first noted in default (noting pleadings closed is an abolished term) and then, depending on the nature of the plaintiff's claim, the plaintiff may: (1) sign default judgment; (2) proceed to trial; or (3) move for judgment.

**RULE 20 SUMMARY JUDGMENT**

This rule reflects a substantial change in the law. As noted earlier, the specially endorsed writ provisions of present rule 33 have not been carried forward. The new summary judgment procedure is not confined to claims of a particular legal nature as is the present procedure (those claims which may be asserted in a special endorsement). See current rule 58. Also, a defendant under the new procedure may move for summary



judgment. See subrule 20.01(3). Summary judgment will be granted if “the court is satisfied that there is no genuine issue for trial with respect to a claim or defence . . . .” See subrule 20.04(2). The main purpose of the rule is to enable a party “to pierce the allegations of fact” in the opposite party’s pleading and obtain the appropriate summary judgment. See Clark, *The Summary Judgment*, 36 Minn.L.Rev. 567 reproduced in *Procedure — The Handmaid of Justice* (1965) at p. 145.

If summary judgment is refused or granted only in part, relief still may be granted but in the form of a narrowing down of the issues, the obtaining of a speedy trial, or various terms respecting payment into court, security for costs and discovery: rule 20.05.

Note that the orthodox view of the constitutional limitations on a master’s power of adjudication are reflected in subrule 20.04(4) which requires the master to adjourn a motion for summary judgment to a judge where “the only genuine issue is a question of law”. Note also that this subrule enables a judge to decide questions of law in motions for summary judgment when there are no facts in issue and to grant the appropriate judgment. In *Arnoldson v Serpa v. Confederation Life Association* (1974), 3 O.R. (2d) 721 at 722 (Ont.C.A.), the current law is stated as follows: “The authorities are clear that where there exists any real difficulty as to a matter of law . . . then summary judgment should not be granted . . . .”

Undoubtedly, this new summary judgment procedure is one which could be widely abused. Accordingly, stringent costs sanctions are provided for improper use of the rule: rule 20.06.

## **RULE 22 SPECIAL CASE**

Rule 22.03 replaces s. 34 of the *Judicature Act* respecting the determination of a special case by the Court of Appeal. However, subrule 22.03(1) requires that a judge of the Court of Appeal grant leave for a special case involving a question of law to be determined in the Court of Appeal while s. 34 provides that the judge of first instance may refer the whole case to the Court of Appeal. Further, subrule 22.03(1) contains more detailed criteria to be satisfied for a special case to be determined in the Court of Appeal than does s. 34.

## **RULE 25 PLEADINGS**

The time for delivery of pleadings (serving and filing them with proof of service: rule 1.03, para. 9) begins to run from the *service* of the preceding pleading (see subrule 25.04(2), which refers to rule 18.01, and subrule 25.04(3)) — and not from its *delivery* as is the current law (see rules 44 and 47).

A party may plead facts which have occurred after the commencement of the action and, with leave, after the delivery of the pleading and leave may be granted even though the fact gives rise to a new claim or defence: subrule 25.06(10).

Subrules 25.07(1)–(3) are important with respect to the definition, in the pleadings, of the issues to be tried. Their effect is that a defendant shall:

- (a) dispute the facts in the statement of claim he or she does not admit;
- (b) admit the facts he or she does not dispute;
- (c) plead that he or she has no knowledge of the facts; or
- (d) plead his or her own version of the facts — a denial of the plaintiff’s version not being sufficient.

Further, the old silence rule (rule 146) is abolished and replaced with the following provision:

Subject to subrule (6), all allegations of fact that are not denied in a party's defence shall be deemed to be admitted unless the party pleads that he or she has no knowledge in respect of the fact. (Subrule 25.07(2))

The exception provided for in subrule (6) reads:

In an action for damages, the amount of damages shall be deemed to be in issue unless specifically admitted.

With respect to claims for relief where there is more than one claimant the amount claimed for each claimant in respect of each claim shall be stated: subrule 25.06(9). This is only common sense but under the current, vaguer, rule (rule 147) the dictates of common sense have not always been followed.

The rule provides guidance with respect to the cases where a reply is necessary. See rule 25.08.

The practice of serving a demand for particulars before a motion for particulars now has legal recognition. See rule 25.10.

Finally, the relief claimed in a statement of claim is now to be set forth at the beginning of the allegations in the document. See Form 14A, page 2. This is also the case with respect to applications. See Form 14E, page 2.

## **RULE 27 COUNTERCLAIM**

This rule, in several respects, draws distinctions between a counterclaim against a person who is already a party to the main action and against one who is not. See subrule 27.01(2), Forms 27A and 27B, rules 27.03, 27.04, 27.05 and 27.07.

A counterclaim document against a person who is not already a party to the main action is, logically, an originating process (subparagraph 1.03 20 (v)). This is the present law (rule 45) except that the present provision refers to "any party to the counter-claim who is not a plaintiff in the original action". This may be contrasted with the wider expression "not already a party to the main action".

There is no limitation on the right to counterclaim but there is not an absolute right to have a counterclaim tried at the trial of the main action. Rule 27.08 provides:

(1) A counterclaim shall be tried at the trial of the main action, unless the court orders otherwise.

(2) Where it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to a party, the court may order separate trials or order that the counterclaim proceed as a separate action.

This provides for a less harsh remedy and more helpful criteria than does the present general purpose provision (rule 139) which has been held to cover counterclaims:

Any pleading that may tend to prejudice, embarrass or delay the fair trial of the action may be struck out or amended.

## **RULE 28 CROSSCLAIM**

The crossclaim is a new creature to cover the case of a claim by one defendant against a co-defendant. Until now such a claim would be asserted either by a mere allegation in a statement of defence where contribution or indemnity is claimed under the *Negligence Act* against a co-defendant or in a third party proceeding. The procedure is marginally simpler than that for third party claims although the basis of being entitled to assert such a claim in each case is identical (see subrule 28.01(1) and rule 29.01) and there are many parallel provisions in Rules 28 and 29.

A crossclaim and a third party claim are each “actions” (para. 1.03 *I*) but while the document which commences a third party claim is an “originating process” that which commences a crossclaim is not. See subparagraph 1.03 20(vi) and subrule 14.01(2).

## RULE 29 THIRD PARTY CLAIM

Probably the most significant innovation in this provision is the express statement of an expanded basis for asserting a third party claim reflected in clause 29.01(b). It contains the expression “... against any person who is not a party to the action and who ... is or may be liable to the defendant for an independent claim for damages or other relief ...” Several cases have denied the right of a defendant to assert an independent claim against a third party even under language wider than that in current rule 167(1). See, for example, *Dufour v. Bellerose et al.* (1982), 142 D.L.R. (3d) 320 (N.B.Q.B.), aff’d on the point in question, (1983), 46 N.B.R. (2d) 388 (N.B.C.A.).

Note the virtually identical language in clause 29.01(b) to that in clauses 5.02(1)(a), 5.02(2)(a), 6.01(1)(b) and 28.01(1)(b).

Rule 29 is to be given effect according to its terms even though there may be an agreement providing that no action may be brought until after judgment against the defendant. (See, for example, *International Formed Tubes Ltd. v. Ohio Crankshaft Co. et al.*, [1965] 2 O.R. 240.) This is provided for in s. 126 of the *Courts of Justice Act, 1984*.

Note that only a plaintiff in the main action (and not the third party) has the express right under the rules to challenge the assertion of a third party claim: rule 29.09. Under the present law there is no such limitation: rule 168.

Only a third party who delivers a statement of defence in the main action has direct procedural and appeal rights with respect to the plaintiff and these rights are not subject to any judicial discretion. See rule 29.05. Under the present law a third party’s rights at the trial are subject to the trial judge’s discretion whether or not he or she has delivered a defence in the main action: rule 171b(5). With respect to discovery and appeal rights see, respectively, rules 171a(b)–(d), and 171c.

## RULES 30 to 36 DISCOVERY AND EXAMINATIONS

It will be helpful to describe the general scheme of these rules before dealing with some of them separately. Rules 30 to 33 deal with the various kinds of discovery as follows:

Rule 30	Discovery of Documents
Rule 31	Examination for Discovery
Rule 32	Inspection of Property
Rule 33	Medical Examination of Parties

In the definition provision a general definition of “discovery” is given:

“discovery” means discovery of documents, examination for discovery, inspection of property and medical examination of a party as provided under Rules 30 to 33; (Para. 1.03 *II*).

Procedural matters with respect to examinations, which are by no means confined to examinations for discovery (except in Rule 35), are provided for in Rules 34 to 36 as follows:

Rule 34	Procedure on Oral Examinations
Rule 35	Procedure on Examination for Discovery by Written Questions
Rule 36	Taking Evidence Before Trial



One feature of the scheme may be seen from this example. With respect to an examination for discovery conducted orally it can generally be said that Rule 31 provides for the nature and scope of a party's discovery rights while Rule 34 provides for the procedure to be followed to conduct the examination.

### **RULE 30 DISCOVERY OF DOCUMENTS**

The definition of "document" ("includes . . . information recorded or stored by means of any device . . .": subrule 30.01(1)) is intended to bring computer information within the scope of documentary discovery.

There is an automatic obligation to disclose all documents relating to any matter in issue in an action: subrule 30.03(1). In other words, the obligation is not dependent, as it is now, on being served by the opposite party with a notice to produce documents. See current rule 347 and Form 21.

The scope of documentary discovery is widened. A court order may be obtained requiring a party to disclose "all relevant documents in the possession, control or power of the party's subsidiary or affiliated corporation or of a corporation controlled directly or indirectly by the party . . .": subrule 30.02(4).

The importance of complete disclosure is emphasized by the requirement that a party's solicitor shall certify on the affidavit of documents (which under the current law is called an affidavit on production) "that he or she has explained to the deponent the necessity of making full disclosure of all relevant documents": subrule 30.03(4). This is to bring home the responsibility for completeness to the party and the solicitor.

Further, insurance policies under which an insurer may be liable to satisfy all or part of the judgment in the action are subject to disclosure and production: subrule 30.02(3).

There is an automatic obligation (i.e., not one depending upon a notice, summons or order) to take and to produce at the examination for discovery and trial of an action all documents listed in a party's affidavit of documents that are not privileged: subrule 30.04(4).

There is an expressed continuing obligation to make documentary discovery. A party who comes into possession of a relevant document after serving his or her affidavit of documents is obliged to serve a supplementary affidavit of documents: rule 30.07.

There is a rule which bears directly on a recurring troublesome problem which arises when a party attempts to introduce into evidence at a trial a document which he or she has not disclosed or produced. There is no provision dealing with this in the current rules. Subrule 30.08(1) provides that

[w]here a party fails to disclose a document in an affidavit of documents or a supplementary affidavit, or fails to produce a document for inspection in compliance with these rules or an order of the court,

- (a) if the document is favourable to his or her case, the party may not use the document at the trial, except with leave of the trial judge; or
- (b) if the document is not favourable to his or her case, the court may make such order as is just.

In *Rozier v. Ford Motor Company* (1978), 573 F.2d 1332 (C.A. 5th Circuit), under differently worded procedural provisions respecting the remedy, the court granted the plaintiff a new trial where the defendant had failed to disclose a document relevant to the plaintiff's case that it was obliged to disclose on discovery.

A related problem is dealt with in rule 30.09 which is concerned with the use of a document at trial where a privilege which has been claimed in respect of it is abandoned



later than ten days after the action is set down for trial. The rule is that “the party may not use the document at the trial, except to impeach the testimony of a witness or with leave of the trial judge.”

Rule 53.08 has to be read together with the two foregoing rules and other rule provisions which are referred to in it. It reads:

Where evidence is admissible only with leave of the trial judge under,

- (a) subrule 30.08(1) (failure to disclose document);
- (b) rule 30.09 (failure to abandon claim of privilege);
- (c) rule 31.07 (refusal to disclose information on discovery);
- (d) subrule 31.09(3) (failure to correct answers on discovery);
- (e) subrule 53.03(2) (failure to serve expert’s report),

leave shall be granted on such terms as are just and with an adjournment if necessary, unless to do so will cause prejudice to the opposite party or will cause undue delay in the conduct of the trial.

Finally, there is a provision (rule 30.10) for production from non-parties, on court order, where the court is satisfied that

- (a) the document is relevant to a material issue in the action; and
- (b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

Note the parallel provision respecting discovery of information (not discovery of documents which is the concern of Rule 30) in rule 31.10.

It should be noted that a higher degree of relevance is required for production from non-parties (“the document is relevant to a material issue in the action” (clause 30.10(1)(a)) than from parties (“[e]very document relating to any matter in issue in an action”: subrule 30.02(1)).

## **RULE 31 EXAMINATION FOR DISCOVERY**

Discovery may take the form of examination by written questions and answers as an alternative to oral examination: subrule 31.02(1) and Rule 35. The scope of discovery is broadened. It now expressly includes discovery of evidence (clause 31.06(1)(a)); cross-examination, generally, except with respect to credibility only, is allowed (clause 31.06(1)(b)); and cross-examination is now allowable on the affidavit of documents (clause 31.06(1)(c)). Further, discovery may be had with respect to the identity of persons who have knowledge of transactions or occurrences in issue (unless the court orders otherwise), expert opinions and insurance policies: subrules 31.06(2)–(4).

There is a clear duty to disclose information discovered after an examination for discovery: rule 31.09. It does not depend on whether an undertaking to this effect has been given. For the current law see Kerzner, *Examination for Discovery: Undertaking to Divulge After-Acquired Information*, 4 *Advocates’ Quarterly* 86 (1983).

As indicated in the commentary on Rule 30 the new rules provide for an opportunity to discover information from non-parties on court order: rule 31.10. The conditions are similar to but more extensive than those for documentary discovery of non-parties: 30.10.

Subrule 31.11(1) clarifies the nature and extent of a party’s right to read into evidence at trial any part of the evidence given by an adverse party on examination for discovery. (See, now, rule 329.) It covers adverse parties and not just opposite parties and the purpose of the reading in is to put the discovery evidence in “as part of [the party’s]

own case” and not for impeachment purposes. (Impeachment is dealt with in subrule 31.11(2)). This is made clear by the concluding clause — “whether the [adverse] party or person has already given evidence or not.”

There is also provided the right, with leave of the trial judge, to read into evidence the discovery evidence of one’s “own” witness if certain conditions are satisfied: subrules 31.11(6) and (7). There is nothing in the current rules on this. For the common law position on adducing evidence given in a previous judicial proceeding see *Town of Walkerton v. Erdman* (1894), 23 S.C.R. 352 and see Schiff, *Evidence in the Litigation Process*, 2nd ed. (1983), pp. 300–305 which contains a useful discussion of statutory provisions and rules of court on this subject.

### **RULE 33 MEDICAL EXAMINATION OF PARTIES**

The medical examination scheme is divided between statute (*Courts of Justice Act, 1984*, s. 118) and Rule 33. It expressly includes mental examinations and provides substantially more guidance to the parties with respect to such examinations than does the present law, all with the view of making these examinations more effective. Note the new obligations, on each side, imposed by subrules 33.04(2) and 33.06(2) to make documentary discovery in connection with the medical examination.

### **RULE 34 PROCEDURE ON ORAL EXAMINATIONS**

Rule 34.01 provides that it is to apply to the following kinds of examination:

- (a) an oral examination for discovery under Rule 31;
- (b) the taking of evidence before trial under rule 36.01, subject to rule 36.02;
- (c) a cross-examination on an affidavit for use on a motion or application under rule 39.02;
- (d) an examination out of court of a witness before the hearing of a pending motion or application under rule 39.03; and
- (e) an examination in aid of execution under rule 60.18.

Rule 34 recognizes that an examination may be held in the office of an official examiner (see *Courts of Justice Act, 1984*, s. 104) or before any person agreed upon by the parties. Further, if it is held in the office of an official examiner it need not be held before an official examiner.

The law with respect to the issuing of a letter of request (formerly letters rogatory) is relaxed: clause 34.07(2)(b). Under the current law such relief is not granted unless “absolutely necessary”. See Williston and Rolls, *The Law of Civil Procedure* (1970), p. 984.

The person before whom the examination is held is not to rule on the propriety of questions. Such rulings may be obtained only on motion to the court: subrule 34.12(3). Unless a favourable ruling is obtained at the hearing the answer to a question objected to, although answered voluntarily, may not be used at a hearing: subrule 34.12(2). An official examiner may make rulings in respect of the conduct of an examination but not in respect of the propriety of a question. Such rulings are subject to review on motion: rule 34.13.

Where the right to examine is being abused or improperly interfered with a party may adjourn the examination for the purpose of moving for directions with respect to the continuation of the examination: rule 34.14.

Rule 34.15 provides for various sanctions for default or misconduct by any person to be examined. It is intended to give the master jurisdiction to order that proper questions be answered, no matter what the nature of the examination, and to grant other relief

(*not* including a contempt order — see subrule 34.15(2)), thereby “overruling” *C.M. Oliver & Co. v. Gilroy*, [1959] O.R. 316 at 320–21.

Subrule 34.18(1) provides that:

It is the responsibility of a party who intends to refer to evidence given on an examination to have a copy of the transcript of the examination available for filing with the court.

In other words, it is not the responsibility of the official examiner or person who reported the examination to file a transcript of the examination. (See now rule 339(3).)

Subrule 34.19(1) provides:

On consent of the parties or by order of the court, an examination may be recorded by videotape or other similar means and the tape or other recording may be filed for the use of the court at the hearing along with the transcript.

### **RULE 35 PROCEDURE ON EXAMINATION FOR DISCOVERY BY WRITTEN QUESTIONS**

The comment with respect to Rule 31 (subrule 31.02(1)) mentioned that the written question method was an optional form of discovery. This rule sets forth the procedure which governs a written question examination.

### **RULE 36 TAKING EVIDENCE BEFORE TRIAL**

This rule ties in closely with parts of Rule 34. It covers the taking of evidence before trial both in and outside Ontario for use at the trial.

### **RULE 37 MOTIONS — JURISDICTION AND PROCEDURE**

This rule, as is Rule 38 which is concerned with applications, is another important rule with pervasive effects. The pattern at the beginning of it is as follows:

#### *Scheme of Rule Respecting Jurisdiction Generally*

- I. Rule 37.02 allocates *subject matter* jurisdiction over particular kinds of motions among judges, local judges and masters. With respect to motions in the Supreme Court, it deals with the jurisdiction of a judge of the High Court (subrule 37.02(1)), the jurisdiction of a local judge (subrule 37.02(2)), and the jurisdiction of a master (subrule 37.02(3)). There will no longer be local masters.
- II. Rule 37.03 is concerned with *the place*, i.e. county or district, where motions should be made.
- III. Rule 37.04 is concerned with *to whom* (master, local judge or High Court judge) in a Supreme Court proceeding motions should be made in a county or district, assuming that the subject matter and place of hearing conditions are satisfied. Note the limited number of motions which are to be made to local judges in the Judicial District of York: clause 37.04(1)(b).

The master’s subject matter jurisdiction over motions is stated positively and simply in subrule 37.02(3). Contrast the negative and complicated presentation of the master’s jurisdiction in current rules 209 and 210. Note, further, that this simple straightforward language, with few qualifications, results in the enlarging of the master’s subject matter jurisdiction.



An important innovation with respect to the place of hearing is the general rule that a motion made on notice shall be heard in the county where the responding party's solicitor practises law: clause 37.03(2)(a). This is so even though the master to whom the motion could otherwise be made in another county (e.g. in Toronto, Ottawa, London or Windsor) has jurisdiction throughout the province. (See Holmested & Gale, *Ontario Judicature Act and Rules of Practice* (Vol. 2), p. 1439.) For example, Toronto solicitors and other solicitors will no longer be able to make motions in Toronto if the responding party's solicitor practises law outside the Judicial District of York.

There are several exceptions to this general rule. See the balance of rule 37.03. Two of the exceptions are: (1) where "the parties agree otherwise" (subrule 37.03(2)) and (2) where the motion is within the exclusive jurisdiction of a High Court judge (subrule 37.03(4)). In the latter case the motion may be made in any county or district in which a High Court judge is available to hear motions. This will usually be Toronto, Ottawa and London.

The Williston Committee considered this new place of hearing rule to be an important innovation. It was based on many submissions to it, chiefly from the bar outside Toronto. It was a policy decision in the Williston draft that we felt bound to follow even though it caused us considerable drafting difficulty and even though some of us felt that its costs might outweigh the benefits — particularly in proceedings in the District Court which, unlike the county and district courts, is a province-wide court. The operation of this rule, in particular, should be carefully monitored.

### *Subject Matter Jurisdiction*

Returning to subject matter jurisdiction, the scheme of allocation is as follows. The starting point is, naturally, a statutory provision. The *Courts of Justice Act, 1984* provides in s-s. 13(1) and 14(1):

13.-(1) Unless otherwise provided, proceedings in the Supreme Court shall be in the High Court.

...

14.-(1) Unless otherwise provided by an Act or the Rules of Civil Procedure, every proceeding in the High Court shall be heard and determined by one judge of the High Court.

Note that s-s. 14(1) recognizes that the Rules Committee may provide for exceptions to the general rule that all "proceedings" in the *Courts of Justice Act, 1984* (which in the present context would include motions) shall be heard and determined by one judge. Clauses 90(h) and (i) in the *Courts of Justice Act, 1984* enable the Rules Committee to make rules in relation to:

- (h) jurisdiction of local judges, including the conferral on local judges of any jurisdiction of the Supreme Court or a judge thereof, including jurisdiction under an Act, but not including the trial of actions;
- (i) jurisdiction of masters, including the conferral on masters of any jurisdiction of the Supreme Court, including jurisdiction under an Act, but not including the trial of actions or jurisdiction conferred by an Act on a judge;

(See also s-s. 12(2) of the *Courts of Justice Act, 1984* which provides that "[e]very local judge has the jurisdiction conferred by the Rules of Civil Procedure" and s-s. 20(3) which provides that "[e]very master has the jurisdiction conferred by the Rules of Civil Procedure.")

Accordingly, the Rules Committee may make rules respecting, at least, the motion jurisdiction of local judges and of masters and this power includes the making of such



rules where a statute confers jurisdiction on the Supreme Court or a judge thereof (with respect to local judges) or on the Supreme Court (with respect to masters).

The definitions of “court” and “judge” are important with respect to jurisdiction over motions.

Paragraph 1.03 7 reads:

“court” means the court in which a proceeding is pending and, in a proceeding in the High Court, includes,

- (i) a judge or local judge having jurisdiction to hear motions under Rule 37, applications under Rule 38, divorce actions under subsection 12(3) of the *Courts of Justice Act, 1984* and Rule 70, or actions under any other statute, and
- (ii) a master having jurisdiction to hear motions under Rule 37;

Paragraph 1.03 14 reads:

“judge” means a judge of the court, but does not include a local judge, except where a local judge has the jurisdiction to hear motions under Rule 37, applications under Rule 38, divorce actions under subsection 12(3) of the *Courts of Justice Act, 1984* and Rule 70, or actions under any other statute;

There is no problem with respect to motion jurisdiction in the District Court. All motions are heard by a District Court judge: subrule 37.02(1). There are no local judges or masters in the District Court.

The scheme of motion jurisdiction in the Supreme Court is as follows:

If a statute or rule enables a motion to be made to “the court” (as opposed to “a judge”) the motion is within the jurisdiction of a master unless it comes within an exception set forth in subrule 37.02(3). As paragraph 1.03 7 indicates, the term “the court” is a neutral term with respect to subject matter jurisdiction in the sense that it potentially encompasses judges, local judges and masters. In line with this position, if a provision which confers the right to move for a particular order makes no mention of the forum (i.e., “court” or “judge”) which may grant the relief (this is not likely to occur in a statutory provision but is not uncommon in the rules — see, e.g., rules 34.13 and 56.07) the motion may be made to a master unless it comes within a subrule 37.02(3) exception. Similarly, if a motion which is not expressly provided for in a rule is made to enforce an obligation in the rules it could be made to a master unless one of the subrule 37.02(3) exceptions is applicable.

If a statute or rule which provides for a motion requires that it be made to “a judge” it must be heard by a High Court judge or, subject to any of the exceptions provided for in subrule 37.02(2), a local judge. (Note again the administrative limitation on the kinds of motions that may be made to local judges in the Judicial District of York which is provided for in clause 37.04(1)(b).) As indicated above, if a statute or rule refers to “the court” a judge or local judge *could*, from a subject matter jurisdiction standpoint, hear the motion.

It may be useful to note at the conclusion of these comments on jurisdiction respecting motions in the Supreme Court the general rule that a motion made in connection with a reference shall be heard by the referee: subrule 54.05(1).

### *Particular Features of Rule 37*

A motion is defined to mean “a motion in a proceeding or an intended proceeding”: para. 1.03 17. It therefore covers motions before the commencement of a proceeding. Rule 37.17 affords one example. It reads:

In an urgent case, a motion may be made before the commencement of a proceeding on the moving party's undertaking to commence the proceeding forthwith.

Other rules that provide for a pre-proceeding motion are subrule 9.02(1) (for an order appointing a litigation administrator) and subrule 14.01(3) (for leave to commence a proceeding where this is required).

A feature of the new rules is that appeals from interlocutory orders are classified as appeals and not as species of motion, as in the current rules (see rules 220 and 514) and are governed by their own rule, Rule 62 (specifically, rule 62.01).

Records are now required for all motions on notice in the Supreme Court whether they are to High Court judges, local judges or masters, for motions in the District Court which are to be heard in a county other than where the proceeding was commenced, and for conference telephone call motions. Further, only the record and not the court file (unless requested by the judge or master or requisitioned by a party) will be placed before the judge or master: subrules 37.10(1) and (2).

The general "rule" is that a factum (i.e., a concise statement of the facts and the law) is not required on a motion. However, there are some specific exceptions. Rule 20.03 (motion for summary judgment), rule 21.03 (determination of an issue before trial), rule 22.02 (special case), subrule 61.03(2) (motion for leave to appeal), 61.15(4) (motion in appellate court to be heard by more than one judge) and subrule 62.02(6) (motion for leave to appeal from an interlocutory order) all require the delivery of a factum on the motions referred to in them — and, in all cases, a party is *entitled* to deliver a factum (rule 37.10(7)).

On consent, contested motions may be heard by means of a conference telephone call: rule 37.12.

In a complicated proceeding or where there are two or more proceedings in a court that involve similar issues a judge may be designated to hear all motions in the proceeding or proceedings: rule 37.15.

A vexatious litigant may be prohibited from making further motions without leave: rule 37.16. The existence of a pending motion for other relief is not a requirement of the power to grant the relief under this provision as it appears to be in the current rules. See rule 235a and subrule 7751a(1).

## **RULE 38 APPLICATIONS — JURISDICTION AND PROCEDURE**

This important rule is closely related to rule 14.05, which is discussed above, and to Rule 68 which is concerned with applications for judicial review. See rule 38.01 and subrule 68.02(1) with respect to the extent of the application of Rule 38 to applications to the Divisional Court.

Apart from applications for judicial review or for a prerogative remedy or where an application has been removed from the District Court in accordance with a statute, the subject matter jurisdiction of High Court judges and local judges to hear applications is the same (rule 38.02) and there is no restriction on local judges in the Judicial District of York as there is with respect to motions (clause 37.04(1)(b)). An example of the second exception (where an application has been removed from the District Court) would be a case where a mental incompetency application has been removed from the District Court to the Supreme Court under s. 3 of the *Mental Incompetency Act*.

Rule 38.02 effects a substantial extension of a local judge's jurisdiction with respect to hearing applications. However, note that in an application to a local judge the respondent has the right to have the application transferred to a High Court judge: rule 38.03.

The rules do not confer application jurisdiction on the District Court. See subrule 14.05(3), discussed earlier. However, under the new rules there is no problem respecting the District Court having effective jurisdiction to hear applications which are created by statute. With respect to the present law see *Re Gallant and Veltrusy Enterprises Ltd.* (1981), 32 O.R. (2d) 716 and the cases to which it refers for problems respecting county court originating motion jurisdiction.

The master has no application jurisdiction under the rules. However, see the master's statutory application jurisdiction conferred by the *Mortgages Act*, s. 38 and the *Personal Property Security Act*, s. 45 (see *Federal Business Development Bank v. Registrar of Personal Property Security* (1982), 38 O.R. (2d) 471).

Records are required in all applications in the Supreme Court and the District Court: rule 38.10.

As is the case under the current law respecting originating motions there is no requirement, except with respect to certain family law proceedings (see rule 71.05), with respect to the place where an application must be heard. However, as a practical matter applications in the Supreme Court to be heard by a High Court judge will be heard only in places where a hearing date can be obtained from the registrar in the county where it is to be heard and these will be where a judge is "sitting for the hearing of applications". See subrules 38.04(2) and (3). Further, the place of hearing provisions respecting applications (rule 38.04) are not applicable to applications for judicial review to the Divisional Court (subrules 38.01(2) and 68.02(1)). The applicant is to request that the application be heard at a place where the Divisional Court is scheduled to sit (Form 68A).

## **RULE 39 EVIDENCE ON MOTIONS AND APPLICATIONS**

This rule attempts to prevent the indiscriminate resort to cross-examination on affidavits used on motions and applications. A party may not cross-examine on an affidavit until he or she has served every affidavit on which he or she intends to rely: subrule 39.02(1). After a party has cross-examined on an affidavit he or she may not subsequently deliver an affidavit without leave of the court or consent: subrule 39.02(2).

This rule also deals with the frequently recurring problem which arises where a party seeks at the last minute an adjournment to cross-examine on an affidavit. The court "may refuse an adjournment of a motion or application for the purpose of cross-examination where the party seeking the adjournment has failed to act with reasonable diligence": subrule 39.02(3).

Also, the cross-examining party, where he or she orders a transcript, is obliged to purchase and serve a copy of the transcript on every adverse party on the motion, free of charge, and is liable for the party and party costs of every adverse party on the motion in respect of the cross-examination, regardless of the outcome of the proceeding, unless the court orders otherwise: subrule 39.02(4).

## **RULES 40 TO 45 PRESERVATION OF RIGHTS IN PENDING LITIGATION**

Probably the main feature of the innovations in these rules is the spelling out in some detail of practices that have until now been unexpressed in rule form.

## **RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER**

An interlocutory injunction on motion without notice may be granted for a period not exceeding ten days: subrule 40.02(1).



**RULE 48 LISTING FOR TRIAL**

This is an important rule. It provides the mechanism for moving an action, following the close of pleadings, to trial as speedily as possible.

The two main steps in the processing of actions for which it makes provision are:

- (1) *setting down for trial* (rules 48.01 to 48.04) and
- (2) *placing of the action on the list for trial* (rules 48.05 to 48.07).

The certificate of readiness procedure under the current rules is replaced by certain automatic consequences flowing from the two steps mentioned. With certain defined exceptions “[a]ny party who has set an action down for trial and any party who has consented to the action being placed on a trial list shall not initiate or continue any motion or form of discovery without leave of the court”: subrule 48.04(1). A party must be “ready for trial” before he or she sets the action down for trial (rule 48.01) and the taking of this step puts pressure on the other party to get ready for trial.

Note that the process of setting an action down for trial includes the service as well as the filing of the trial record together with a notice of readiness for trial: subrule 48.02(1).

To place a defended action on the trial list a party shall serve a notice of listing for trial sixty days after the action was set down for trial or immediately on the filing of the consent in writing of every party other than the party who set the action down for trial: subrule 48.06(1).

Where an action is placed on the list rule 48.07 provides that:

- (a) all parties shall be deemed to be ready for trial;
- (b) a pre-trial conference in the action shall proceed as scheduled unless the judge or officer presiding at the conference orders otherwise; and
- (c) the trial shall proceed when the action is reached on the trial list unless a judge orders otherwise.

Rule 48 also contains a provision for a separate speedy trial list: rule 48.09. Speedy trials may be ordered under clause 20.05(1)(a) (in the summary judgment procedure) and clause 37.13(1)(a) (a form of relief which may be granted in the disposition of a motion).

Note that there are continual trial lists in judicial centres and that actions are placed on these lists without reference to any particular sitting. (In the current rules see subrules 249(3) and (6).) However, for administrative purposes, it is provided that “[a]n action shall not be placed on a trial list for a sitting outside Toronto unless the notice of listing for trial, with proof of service, is received by the registrar at the place of trial at least ten days before the commencement of the sitting, except where [a judge] orders otherwise.” (Subrule 48.06(5))

If an action is not placed on a trial list or terminated by any means within one year after the filing of a statement of defence rule 48.14 provides for a status hearing procedure before a judge or local judge. Among the options open to the court in a status hearing is the ultimate sanction of dismissal of the action for delay: clause 48.14(5)(b).

**RULE 49 OFFER TO SETTLE**

This rule represents an important innovation in the rules relating to the encouragement and facilitation of settlements. It applies to actions and applications and is not restricted to proceedings where the only relief sought is a judgment for money. An offer may be made by a plaintiff and a defendant. The offer to settle procedure covers more

ground than the current payment into court in satisfaction of the plaintiff's claim procedure (rules 306 to 318a) and replaces it.

Since virtually the whole of the rule represents an innovation (see now the offer procedure for family law matters in rule 775i) there is no basis for singling out innovative features. However, it should be noted that the rule alters the common law in providing that a rejected offer is still open for acceptance: subrule 49.07(2). This is contrary to a decision on current rule 775i: *Tam v. Tam* (1982), 29 R.F.L. (2d) 162. This is necessary to preserve the rule's potential costs benefits.

Express sanctions are provided for failure to comply with an accepted offer which include a motion for judgment in terms of the accepted offer: rule 49.09.

This rule should result in few cases going to trial without there having been realistic offers made by each party. The costs consequences of offers, provided for in rules 49.10, 49.12 and 49.13, are emphasized in the opening provision of the general rule which is concerned with the awarding of costs (subrule 57.01(1)) which reads:

In exercising its discretion . . . to award costs, the court may consider, in addition to the result in the proceeding *and any offer to settle made in writing*, . . . [nine separate clauses follow]. (Emphasis added.)

Although the payment into court procedure in the present rules with respect to the satisfaction of the plaintiff's claim is replaced by this new offer to settle procedure the benefit of having money paid into court can be secured as an optional term of offers and acceptances under Rule 49. See subrules 49.07(3) and (4).

Subrule 49.02(2) provides that Rule 49 does not apply to motions but goes on to provide that nothing in it "prevents a party from making a proposal for settlement of a motion or the court from taking the proposal into account in making an order in respect of costs" and subrule 70.27(5) provides that "the judge or officer who hears a motion for interim relief [in a divorce action] shall take into account any written proposal for settlement of the motion or the failure to make such a proposal."

## **RULE 50 PRE-TRIAL CONFERENCE**

This rule expressly authorizes a pre-trial conference to be conducted not only by a judge but also an "officer" (a commissioner, usually a retired judge): rule 50.01. (For the statutory authority to appoint an officer, see *Courts of Justice Act, 1984*, s. 24.) It should be noted that an officer cannot make the orders which a judge can on a pre-trial conference. See subrule 50.02(1) and rule 50.06.

## **RULE 51 ADMISSIONS**

This rule is a useful adjunct to the discovery provisions and should be helpful in obtaining, for the purpose of a proceeding, admissions respecting the truth of a fact or the authenticity (elaborately defined) of a document.

## **RULE 52 TRIAL PROCEDURE**

A significant new feature of this rule is the court appointed expert procedure. A judge is empowered, on motion of a party or on his or her own initiative, to appoint one or more independent experts "to inquire into and report on any question of fact or opinion relevant to an issue in the action": subrule 52.03(1). Rule 52.03 provides substantially more guidance on the procedure governing the role of the court appointed expert witness than does the present rule 267.

**RULE 53 EVIDENCE AT TRIAL**

The trial judge may permit a party calling a witness who appears unwilling or unable to give responsive answers to examine him or her by means of leading questions: subrule 53.01(4).

A party calling a witness who needs an interpreter shall provide the interpreter “unless the interpretation is to be from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General”: subrule 53.01(6).

At the trial of an undefended action the plaintiff’s case may be proved by affidavit unless the trial judge orders otherwise: subrule 53.02(3). See also the express rule on this point relating to the trial of undefended divorce actions: subrule 70.21(1).

No expert witness may testify, except with leave of the trial judge, unless ten days before the commencement of the trial the party who intends to call the witness serves on every other party to the action “a report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony”: subrule 53.03(1).

There is a reasonably elaborate procedure governing the calling of an adverse party as a witness: rule 53.07.

Rule 53.08, which has been quoted earlier in this report in connection with subrule 30.08(1) and rule 30.09, provides a basic rule governing the case where, by reason of non-compliance with some rule, evidence is admissible only with leave. The “rule” is that “leave shall be granted on such terms as are just and with an adjournment if necessary, unless to do so will cause prejudice to the opposite party or will cause undue delay in the conduct of the trial.”

**RULE 54 DIRECTING A REFERENCE**

One new feature of the law relating to references is that all of it is now contained in the rules and not, as is the case now, divided between statute (*Judicature Act*, ss. 70 to 75) and the rules (rules 402–462). See *Courts of Justice Act, 1984*, clause 90(r) which is the statutory authority for the making of rules in relation to references.

Rule 54 and Rule 55 (procedure on a reference) are intended to apply to all kinds of references, whether they be under rule 54.02 (which is the main reference rule), under any other rule, or under a statute: rule 54.01.

There was a substantial objection from the bar to the Williston Committee to the practice of judges, without good reason (it was submitted) or the consent of the parties, directing references with respect to damages. The authority for this must have been s-s. 70(1) of the *Judicature Act*. This is no longer possible unless the matter can be fitted into one of the relevant clauses of subrules 54.02(1) or (2), which would be unlikely in most cases.

Under the present law it is not clear that all reports need to be confirmed to be effective (see Holmsted and Gale, *Ontario Judicature Act and Rules of Practice*, Vol.3, pages 2301–2303 and *Canada Square Corporation et al. v. VS Services Ltd. et al.* (1981), 34 O.R. (2d) 250 at pages 284–85) and the law is unclear on which reports are of the kind that do not require confirmation. Rule 54.07 deals with this issue directly:

A report has no effect until it has been confirmed.

There are two basic methods for confirming a report: (1) on motion to a judge and (2) by passage of time.



The following indicates the four situations in which these basic methods may, in fact, work:

- (1) *Where the order directing a reference requires the referee to report back.* The report may be confirmed only on a motion to the judge who directed the reference (subrule 54.08(1)) unless he or she is unable to hear the motion, in which case it may be made to another judge (subrule 54.08(2)).
- (2) *Where the reference is to a family law commissioner under rule 70.22.* The report may be confirmed on a motion to a High Court judge where a High Court judge directed the reference or to a local judge where a local judge directed the reference unless the referring judge directs that the motion shall be to him or her: subrule 70.22(3).
- (3) *Where the order directing a reference does not require the referee to report back.* The report is confirmed on the expiration of fifteen days after a copy, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced unless a notice of motion to oppose confirmation of the report is served within that time: subrule 54.09(1). Note that this motion to oppose confirmation procedure replaces the current procedure of challenge by way of an appeal from the report within fifteen days from the date of serving notice of filing of the report. See rule 512. If the report is not effective before confirmation, is it a logical basis for an appeal?
- (4) *Where the order directing a reference does not require the referee to report back but early confirmation is sought.* Where the report is of the type to be confirmed by the passage of time there is the option, where a party seeks confirmation before the expiration of the period, to make a motion to a judge for confirmation: subrule 54.09(4).

Masters (see subrule 20.04(3)) and registrars (see clause 64.03(9)(a)) can direct references but have no power to direct that the referee report back. Accordingly, the only method of confirming a report on a reference directed by a master or registrar is the passage of time procedure: subrule 54.04(2). See also clause 54.09(2)(c) to the effect that in a Supreme Court proceeding a motion to oppose confirmation of a report where the reference was directed by a master or a registrar is to be made to a High Court judge or a local judge.

## **RULE 56 SECURITY FOR COSTS**

The current procedure which enables an initial order for security for costs, where the plaintiff resides out of Ontario, to be obtained on *praecipe* (rule 374) is not continued. Under the new procedure all orders for security for costs must be obtained on motion made only after the defendant has delivered a defence: rule 56.03.

Note that security for costs may be ordered where the plaintiff is a “shell” corporation: clause 56.01(d).

There is a discretion with respect to whether security should be ordered. Rule 56.01 provides that the court may make such order for security for costs “as is just”. This should allow the merits of a case to be an appropriate consideration. Under the current rules they probably are not: *Re Agar*, [1957] O.W.N. 208 at 209.

**RULE 57 COSTS OF PROCEEDINGS BETWEEN PARTY AND PARTY**

The basic provision respecting the power of a court to award costs is contained in s-s. 141(1) of the *Courts of Justice Act, 1984* which reads:

Subject to the provisions of an Act or rules of court, the costs of a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

The potentially overriding effect of the rules respecting entitlement to and the amount of costs is made clear in the opening clause of this provision.

After stressing, because they are set forth in the opening part of the provision, the importance of the result and any offer to settle made in writing, subrule 57.01(1) lists several factors in clauses (a) to (i) which are to be taken into account by the court in exercising its discretion to award costs.

There are many rules which make explicit provision for costs awards and which could govern the ultimate disposition of costs. The following are examples:

- (1) The fixing of costs on a solicitor and client basis and ordering that they be paid forthwith where a motion for summary judgment fails, unless the court is satisfied that the motion was reasonable: subrule 20.06(1).
- (2) The same kind of a costs disposition as in (1) where a party to a motion for summary judgment has acted in bad faith or primarily for the purpose of delay: subrule 20.06(2).
- (3) A party examining a non-party for discovery is not entitled to recover the costs of the examination from another party unless the court expressly orders otherwise: subrule 31.10(4).
- (4) If the court finds that an oral examination out of court was improperly conducted or adjourned it “may order the [responsible] person to pay personally and forthwith the costs of the motion, any costs thrown away and the costs of any continuation of the examination and the court may fix the costs and make such other order as is just” (subrule 34.14(2)).
- (5) Where leave is refused for the hearing of a motion in other than the responding party’s solicitor’s county the court shall fix the costs of the responding party on a solicitor and client basis together with travelling expenses and order the moving party or his or her solicitor to pay those costs forthwith, unless the court is satisfied that the making of the motion was reasonable: subrule 37.03(6).
- (6) As has been noted a party who cross-examines on an affidavit on a motion “is liable for the party and party costs of every adverse party on the motion in respect of the cross-examination, regardless of the outcome of the proceeding, unless the court orders otherwise” (clause 39.02(4)(b)).
- (7) Subrule 49.07(5) contains provisions respecting entitlement to costs where an accepted offer to settle does not provide for the disposition of costs.
- (8) Subrule 49.10 contains provisions respecting entitlement to costs where an offer is not accepted and the proceeding goes to judgment. Note that these provisions are subject to the court’s ordering otherwise.
- (9) Rule 51.04 contains a soft costs provision — a “take into account” one:

Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is

subsequently proved at the hearing, the court may take the denial or refusal into account in exercising its discretion respecting costs.

- (10) Where a defined party insists on being represented by a different solicitor on a reference he or she shall not recover the costs of the separate representation and, unless the referee orders otherwise, shall pay all costs incurred by the other parties as a result of the separate representation: subrule 55.02(9).
- (11) Subrule 57.01(2) “overrules” the present law. It provides:
  - The fact that a party is successful in a proceeding does not prevent the court from awarding costs against the party in a proper case.
- (12) Subrules 57.03(1) and (2) contain a strong costs scheme which is part of an approach to put teeth into rules designed to discourage unnecessary motions:
  - (1) Where, on the hearing of a contested motion, the court is satisfied that the motion ought not to have been made or opposed, as the case may be, the court shall,
    - (a) fix the costs of the motion and order them to be paid forthwith; or
    - (b) order the costs of the motion to be paid forthwith after assessment.
  - (2) Where a party fails to pay the costs of a motion as required under subrule (1), the court may dismiss or stay the party’s proceeding, strike out the party’s defence or make such other order as is just.
- (13) Where costs are to be paid out of a fund or estate the assessment officer may disallow the costs of the assessment of any party on an assessment whose attendance is unnecessary: subrule 58.09(2).

The court is expressly empowered to give directions to an assessment officer with respect to the assessment: rule 57.02.

There is also express power to impose liability on a solicitor for costs where he or she has caused costs to be incurred without reasonable cause or in other similar circumstances: rule 57.07.

## **RULE 58 ASSESSMENT OF COSTS**

It has already been noted that “assessment” replaces “taxation” with respect to costs.

The provisions in Rule 58 come into play where either “a rule or order provides that a party is entitled to . . . costs . . .”: rule 58.01. The order awarding costs will be the usual authority for an assessment of costs but there are, also, several rules which define situations which enable a party to have costs assessed without an order. See, for example, rule 23.05 (costs on discontinuance of action), subrule 37.09(3) (costs on an abandoned motion), subrule 38.09(3) (costs on an abandoned application), subrule 49.07(5) (costs where accepted offer does not provide for costs), rule 57.04 (costs to which a party is entitled on a settlement which does not determine their amount), subrule 60.11(10) (costs of a motion under subrule 60.11(9) and expenses of doing act required to be done under order), rule 60.19 (certain costs of enforcing an order), and subrule 61.13(3) (costs of an abandoned appeal). These provisions should be read together, not only with rule 58.01 which deals with entitlement to assessment, but also rule 57.04, subrule 58.03(1) and rule 58.08 which are concerned with the mechanics of commencing the assessment process.

Costs are to be assessed in accordance with the Tariffs (subrule 58.06(1)) and it will be noted that there are no longer separate tariffs for the Supreme Court and the District Court (which replaces the county and district courts).



The assessment officer is given power in the rules to award and fix the costs of an assessment: subrule 58.06(6). In the current rules this power is expressed obliquely in an item and note in the tariff. See item 21 of Tariff A (Supreme Court) and item 18 of Tariff A (County Court).

A list of factors to be taken into consideration is provided for the assessment officer (subrule 58.07(1)) and, also, the assessment officer shall give effect to any direction by the court under rule 57.02, which has already been mentioned (subrule 58.07(2)).

As far as the amounts in the Tariffs are concerned it may be noted that they are about 40 per cent higher than those in the Williston Tariffs.

## **RULE 59 ORDERS**

The main new feature of this rule, as has been mentioned earlier, is that it spells out for the first time all of the steps that are to be followed between the making and the entry of an order. See subrules 59.03(1) and (2) and rule 59.04.

It may be noted from Forms 59A (order) and 59B (judgment) that the terminology of these documents is more modern and direct than that of the forms of current orders and judgments.

As far as judgments are concerned, where a judgment is given without any judicial intervention, for example, a default judgment, the commencement of the operative parts will read:

IT IS ORDERED AND ADJUDGED . . . .

However, where the judgment is given by a judge or a master it will read:

THIS COURT ORDERS AND ADJUDGES . . . .

## **RULE 60 ENFORCEMENT OF ORDERS**

Rules 60.02 to 60.05 contain a convenient catalogue of the methods of enforcing orders which are provided for in the balance of Rule 60.

The more accurately described writ of seizure and sale replaces the current writ of *fiери facias*: clause 60.02(1)(a) and rule 60.07. With respect to enforcement against land, while a sale of land may be held six months after the writ is filed with the sheriff (subrule 60.07(17)), a creditor may not take any steps to sell the land until four months after the writ was filed (subrule 60.07(16)). This is in general accord with the recommendation of the Ontario Law Reform Commission in its *Report on The Enforcement of Judgment Debts and Related Matters*, Part III, Chapter 2 (1981) ("O.L.R.C. Report"). Current rule 561 prohibits land from being "expose[d] for sale" under a writ of execution for twelve months after the writ is filed with the sheriff.

Probably the most significant innovation in the rule is the garnishment procedure provided for in rule 60.08. It also is based on the recommendations of the Ontario Law Reform Commission. See O.L.R.C. Report, Part II, Chapter 3. Garnishment proceedings begin with the administrative act of a registrar issuing a notice of garnishment on requisition rather than judicially through a motion for a garnishment order *nisi* (which is the current procedure): subrules 60.08(2) and (3). Future debts are subject to garnishment under the new procedure (clause 60.08(2)(d) and subrules 60.08(7) and (8)). This represents a change in the law.

Where a corporation is in contempt subrule 60.11(6) enables the corporate veil to be pierced and a contempt order may also be made against any officer or director of the corporation.

Rule 60 contains a provision for a motion for directions by a judge or officer “[w]here a question arises in relation to the measures to be taken by a sheriff in carrying out an order, writ of execution or notice of garnishment . . .”: rule 60.17.

The new rules do not carry forward the current provision (rule 563) that a sale of land shall not be made under a writ until after a return of a *nulla bona*. This gives effect to another recommendation of the Ontario Law Reform Commission. See O.L.R.C. Report, Part III, Chapter 2.

As has already been noted, a deficiency in the present law is remedied by a provision entitling a party who is entitled to enforce an order to certain costs relating to the enforcement, i.e. postjudgment enforcement costs: rule 60.19.

## **RULE 61 APPEALS TO AN APPELLATE COURT**

This rule, which applies to appeals to and other proceedings in the Court of Appeal and the Divisional Court (rule 61.01) makes no fundamental changes in the structure of the existing law. Its main purpose is to clarify the law and give more express guidance to the parties. The changes it effects are, accordingly, of a detailed nature.

One significant change in the appellate stage of proceedings is effected by provisions in the *Courts of Justice Act, 1984* which confer a right to review decisions, of all kinds, made by single judges of the Court of Appeal (clause 18(3)(b)) and of the Divisional Court (clause 16(3)(b)) by a motion to set aside or vary the decision. Contrast the limited terms of such rights of review provided in ss. 33 and 40 of the *Judicature Act*. The rule provision governing such motions is subrule 61.15(6).

The following additional features of the new regime are noted:

- (1) The time for serving a notice of appeal is extended from fifteen days after the date of the order appealed from (current rule 497b) to thirty days (subrule 61.04(1)).
- (2) There is now an express rule and form dictating how the title of the proceeding (the new term for style of cause) in an appeal shall read: subrule 61.04(3) and Form 61B;
- (3) the registrar may refuse to accept an appeal book which does not comply with the rules or which is not legible: subrule 61.09(2);
- (4) factums are to include the text of all relevant provisions of statutes, regulations and by-laws: clauses 61.10(f) and 61.11(3)(f);
- (5) there is an express right of review, on motion to a single judge, of orders or decisions of the Registrar: subrule 61.15(5).
- (6) There are no longer monthly lists (see present rule 498(e)) in the Court of Appeal. They are replaced by “a list of cases to be heard”: subrule 61.08(5).

## **RULE 62 APPEALS FROM INTERLOCUTORY ORDERS**

The distinction between final and interlocutory orders, for appeal purposes, remains in the new rules and Rule 62 is concerned with appeals from interlocutory orders. As is mentioned in the commentary on Rule 37, rule 62.01 covers appeals that under the existing law (see rules 220 and 514) are dealt with as motions.

A further distinction in this respect is that the right of appeal from orders of masters and local judges under the new law is created by statute (see *Courts of Justice Act, 1984*, clauses 13(2)(a) and (b)) whereas under the current law it is created by rule. See rule 514.

**RULE 63 STAY PENDING APPEAL**

This rule collects into one place all rule provisions relating to stays pending appeal. (See now rules 505–508 and 514.)

Rule 63 continues the general rule of an automatic stay on the delivery of the notice of appeal (subrule 63.01(1)) and also provides for appeals to be stayed by an order (subrule 63.01(2)).

While a stay does not prevent the issue of a writ of execution or the filing of the writ in the sheriff's office or land registry office, no instruction or direction to enforce the writ shall be given to a sheriff while the stay remains in effect: subrule 63.03(3).

A party moving for leave to appeal or an appellant can free property bound by a writ of execution by obtaining an order setting aside the issue or filing of a writ of execution where security satisfactory to the court is given: subrule 63.03(6).

Note also the connection between the foregoing power (and other powers in Rule 63) and that conferred under rule 60.17 which provides, among other matters, that a motion can be made to an appeal judge for directions respecting a question arising in relation to the measures to be taken by a sheriff in carrying out an order, writ of execution, etc. where an appeal has been taken.

**RULE 64 MORTGAGE ACTIONS**

A significant new feature of the rules relating to mortgage actions is their manner of organization in Rule 64. At the cost of some duplication between some of the rules in it (rules 64.03 to 64.05) foreclosure actions are exclusively covered in rule 64.03, sale actions in rule 64.04 and redemption actions in rule 64.05, apart, in each case, from the detailed reference procedure requirements which are contained in rule 64.06. Little cross-referencing between the rules is required, except with respect to the connection between these rules and rule 64.06.

Note that the redemption period for a defendant who has filed a request to redeem (the document which replaces the “notice desiring an opportunity to redeem the mortgaged property”) has been shortened from six months to “sixty days after the taking of the account of the amount due to the plaintiff”: subrule 64.03(8).

Note the three methods of service provided for in subrule 64.06(5) for (i) execution creditors (by mail at the address of the creditor shown on the writ or most recent request to renew it or, if the creditor's address is not shown, by serving the creditor's solicitor); (ii) construction lien claimants (by mail at the address shown on the claim for lien); and (iii) everyone else (personally or by an alternative to personal service). (Note also that subrule 60.07(11) requires that every writ of seizure and sale shall bear the name and address of the creditor and his or her solicitor, if any.) Contrast the provisions of current rule 204 which enable service of documents in a foreclosure action to be effected on solicitors for execution creditors or mechanics lien claimants.

**RULE 65 PROCEEDINGS FOR ADMINISTRATION**

On the advice of the Surrogate Court Sub-Committee of the Rules Committee we retained provisions governing a proceeding for the administration of the estate of a deceased person and the execution of a trust even though such proceedings are rare.

**RULE 68 PROCEEDINGS FOR JUDICIAL REVIEW**

Subsection 16(4) of the *Courts of Justice Act, 1984* provides that “[s]ittings of the Divisional Court shall be held at such times and in such places as the Chief Justice of the



High Court directs.” Contrast the rather elaborate provisions with respect to place of hearings in the Divisional Court in current rule 497. A practice direction or notice to the profession reflecting the Chief Justice’s directions under the statute would appear to be essential.

Important new features in the application for judicial review in the Divisional Court (*not* applicable to such applications before a judge of the High Court under s-s.6(2) of the *Judicial Review Procedure Act*) are a perfection procedure akin to that for appeals (rule 68.05) and a dismissal for delay procedure, also akin to that for appeals (rule 68.06). The Divisional Court’s experience has shown that each of these new procedures is necessary.

Note also that this rule provides for responsive respondents’ factums (rule 68.04), i.e. factums which require a respondent to deal with the points raised in the appellant’s factum, as is the case with the factum filed in the Court of Appeal and the Divisional Court with respect to appeals.

## **RULE 70 DIVORCE ACTIONS**

This rule, while it is prepared by the Rules Committee, is required to be made by the High Court and the Court of Appeal (*Divorce Act*, s-s. 19(1)). However, since subrule 70.01(1) incorporates valuable “administration of justice” provisions which are in the Rules of Civil Procedure, in addition to procedural rules, it is important that it also be “made” by the Rules Committee.

A feature of Rule 70 is that it is, to a large extent, a comprehensive and self-contained code for divorce actions (which are no longer called “matrimonial causes”). That is it, necessarily, has its own provisions respecting the commencement of a divorce action (subrule 70.03(1)), parties to divorce actions (subrules 70.03(3) to (6)), service of pleadings (rules 70.04 and 70.05), and pleadings (rules 70.06 to 70.13), etc. However, there is still substantial scope for the operation of the incorporation by reference provision, subrule 70.01(1). For example, it incorporates the motion (Rule 37) and discovery (Rules 30–33) provisions in the general rules.

Reference will now be made to some changes effected by Rule 70.

A divorce action is commenced by the issuing of a petition (rule 14.04 and subrule 70.03(1)), not by a notice of petition as under the present rules (rule 787). There is no longer a notice of petition.

The exchange of financial statements (a statement of financial information and a property statement are combined into a financial statement) may be waived unless it is required by statute: subrule 70.14(3).

There is a right to demand particulars of a financial statement where the statement lacks particularity, with appropriate sanctions for failure to comply with an order that particulars be delivered: subrules 70.14(7) and (8).

Evidence may be given in undefended divorce actions by affidavit unless the trial judge orders otherwise (subrule 70.21(1)) and the trial judge may conduct the trial and grant a decree without the appearance by counsel or the petitioner (subrule 70.21(2)).

The following features may be noted with respect to references to family law commissioners (rule 70.22):

- (a) the power to direct such references is confined to judges sitting at Toronto or Ottawa;
- (b) they can be directed only on the consent of the parties;

- (c) local judges have the power to direct a reference (see *Courts of Justice Act, 1984*, s-s. 12(3) and para. 1.03 14 in the rules);
- (d) the confirmation procedure is spelled out (see also rule 54.08 which is referred to earlier); and
- (e) the referring judge is not obliged to order that the report back be to him or her (contrast the terms of the present rule 803a).

There is an express provision, with respect to a motion for interim relief under the *Divorce Act*, for the court to direct “a pre-motion conference to consider the possibility of settling any or all of the issues raised by the motion *or the action*” (subrule 70.27(2), emphasis added).

It is settled expressly that a variation of a final order for corollary relief is to be by notice of application (subrule 70.28(1)), i.e. it is a new proceeding and not a step in the former proceeding.

It is sufficient to note at this point that if Bill C-10 (An Act to amend the *Divorce Act* — First Reading January 17, 1984) becomes law in its present form amendments to Rule 70 will be necessary.

### **RULE 73 PAYMENT INTO AND OUT OF COURT**

This rule does not provide for the equivalent of the present payment into court in satisfaction of a claim procedure which is found in present rules 306 to 318a. As was noted in the commentary under Rule 49 (offer to settle) the offer to settle procedure has supplanted this present procedure. Accordingly, new Rule 73 is largely confined to the mechanics of paying money into and out of court where this process takes place under any one of several provisions in the rules.

For changes in the law reflected in the present fiat procedure used by the Official Guardian with respect to money to be paid out of court to the credit of a person under disability (rule 741) see the motion procedure in subrules 73.03(10) to (14).

J. W. Morden  
Chairman

February 17, 1984

# RULES OF CIVIL PROCEDURE

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RULES OF CIVIL PROCEDURE

GENERAL MATTERS

RULE 1 CITATION, APPLICATION AND INTERPRETATION

CITATION

*Short Title*

1.01 (1) These rules may be cited as the Rules of Civil Procedure.

*Subdivision*

- (2) In these rules,
- (a) all the provisions identified by the same number to the left of the decimal point comprise a Rule (for example, Rule 1, which consists of rules 1.01 to 1.06);
  - (b) a provision identified by a number with a decimal point is a rule (for example, rule 1.01); and
  - (c) a rule may be subdivided into,
    - (i) subrules (for example, subrule 1.01(2)),
    - (ii) clauses (for example, clause 1.01(2)(c) or 2.02(a)),
    - (iii) subclauses (for example, subclause 1.01(2)(c)(iii) or 7.01(c)(i)), and
    - (iv) paragraphs (for example, paragraph 1 of rule 1.03).

*Alternative Method of Referring to Rules*

(3) In a proceeding in a court, it is sufficient to refer to a rule or subdivision of a rule as “rule” followed by the number of the rule, subrule, clause, subclause or paragraph (for example, rule 1.01, rule 1.01(2), rule 1.01(2)(c), rule 1.01(2)(c)(iii) or rule 1.03 1).

APPLICATION OF RULES

*Supreme, District and Surrogate Courts*

- 1.02 (1) These rules apply to all civil proceedings,
- (a) in the Supreme Court of Ontario and the District Court of Ontario; and
  - (b) in the surrogate courts of Ontario, as provided in the *Surrogate Courts Act*,
- except where a statute provides for some other procedure.

*Transitional Provisions*

- (2) These rules apply to a proceeding, whenever commenced, unless the court makes an order under subsection 156(3) of the *Courts of Justice Act, 1984*.
- (3) Notwithstanding subrule (2), rule 48.13 (status hearing in actions) applies only to actions in which a statement of defence is filed after these rules come into force.
- (4) Notwithstanding subrule (2), on the assessment of costs of a proceeding under rule 58.01, the assessment officer shall assess and allow,

- (a) for services rendered and disbursements incurred before these rules come into force, solicitors' fees and disbursements in accordance with the Tariffs in force immediately before these rules come into force; and
- (b) for services rendered and disbursements incurred after these rules come into force, solicitors' fees and disbursements in accordance with the Tariffs to these rules,

unless the court orders otherwise.

## DEFINITIONS

**1.03** In these rules, unless the context requires otherwise,

1. "action" means a proceeding that is not an application and includes a proceeding commenced by,
  - (i) statement of claim,
  - (ii) notice of action,
  - (iii) counterclaim,
  - (iv) crossclaim,
  - (v) third or subsequent party claim, or
  - (vi) divorce petition or counterpetition;
2. "appellant" means a person who brings an appeal;
3. "appellate court" means the Court of Appeal or the Divisional Court, as the circumstances require;
4. "applicant" means a person who makes an application;
5. "application" means a proceeding commenced by notice of application;
6. "county" includes a district or judicial district;
7. "court" means the court in which a proceeding is pending and, in a proceeding in the High Court, includes,
  - (i) a judge or local judge having jurisdiction to hear motions under Rule 37, applications under Rule 38, divorce actions under subsection 12(3) of the *Courts of Justice Act, 1984* and Rule 70, or actions under any other statute, and
  - (ii) a master having jurisdiction to hear motions under Rule 37;
8. "defendant" means a person against whom an action is commenced;
9. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;
10. "disability", where used in respect of a person or party, means that the person or party is,
  - (i) a minor,
  - (ii) mentally incompetent or incapable of managing his or her affairs, whether or not so declared by a court, or
  - (iii) an absentee within the meaning of the *Absentees Act*;



11. “discovery” means discovery of documents, examination for discovery, inspection of property and medical examination of a party as provided under Rules 30 to 33;
12. “hearing” means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;
13. “holiday” means,
  - (i) any Saturday or Sunday,
  - (ii) New Year’s Day,
  - (iii) Good Friday,
  - (iv) Easter Monday,
  - (v) Victoria Day,
  - (vi) Canada Day,
  - (vii) Civic Holiday,
  - (viii) Labour Day,
  - (ix) Thanksgiving Day,
  - (x) Remembrance Day,
  - (xi) Christmas Day,
  - (xii) Boxing Day, and
  - (xiii) any special holiday proclaimed by the Governor General or the Lieutenant Governor,and where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;
14. “judge” means a judge of the court, but does not include a local judge, except where a local judge has jurisdiction to hear motions under Rule 37, applications under Rule 38, divorce actions under subsection 12(3) of the *Courts of Justice Act, 1984* and Rule 70, or actions under any other statute;
15. “judgment” means a decision that finally disposes of an application or action on its merits and includes a judgment entered in consequence of the default of a party;
16. “local judge” means a local judge of the High Court of Justice for Ontario;
17. “motion” means a motion in a proceeding or an intended proceeding;
18. “moving party” means a person who makes a motion;
19. “order” includes a judgment or decree;
20. “originating process” means a document whose issuing commences a proceeding under these rules, and includes,
  - (i) a statement of claim,
  - (ii) a notice of action,
  - (iii) a petition,

- (iv) a notice of application,
- (v) a counterclaim against a person who is not already a party to the main action,
- (vi) a third or subsequent party claim, and
- (vii) a counterpetition against a person who is not already a party to the main action,

but does not include a counterclaim or counterpetition that is only against persons who are parties to the main action, a crossclaim, or a notice of motion;

- 21. “plaintiff” means a person who commences an action;
- 22. “proceeding” means an action or application;
- 23. “referee” means the person to whom a reference in a proceeding is directed;
- 24. “registrar” means the Registrar of the Supreme Court, Court of Appeal or Divisional Court, a local registrar of the Supreme Court or the District Court or the registrar of a surrogate court, as the circumstances require;
- 25. “respondent” means a person against whom an application is made or an appeal or a divorce action is brought, as the circumstances require;
- 26. “responding party” means a person against whom a motion is made;
- 27. “statute” includes a statute passed by the Parliament of Canada.

## INTERPRETATION

### *General Principle*

**1.04** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

### *Matters Not Provided For*

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

### *Party Acting in Person*

(3) Where a party to a proceeding is not represented by a solicitor but acts in person in accordance with subrule 15.01(2) or (3), anything these rules require or permit a solicitor to do shall be done by the party.

## ORDERS ON TERMS

**1.05** When making an order under these rules the court may impose such terms and give such directions as are just.

## FORMS

**1.06** The forms prescribed in the Appendix of Forms shall be used where applicable and with such variations as the circumstances require.

**RULE 2 NON-COMPLIANCE WITH THE RULES****EFFECT OF NON-COMPLIANCE**

**2.01** (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

**ATTACKING IRREGULARITY**

**2.02** A motion to attack a proceeding or a step, document or order in a proceeding for irregularity shall not be made,

(a) after the expiry of a reasonable time after the moving party knows or ought reasonably to have known of the irregularity; or

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity,

except with leave of the court.

**COURT MAY DISPENSE WITH COMPLIANCE**

**2.03** The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.



**RULE 3 TIME****COMPUTATION**

**3.01** (1) In the computation of time under these rules or an order, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) service of a document, other than an originating process, made after 4 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

(2) Where a time of day is mentioned in these rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

**EXTENSION OR ABRIDGMENT*****General Powers of Court***

**3.02** (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

***Times in Appeals***

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

***Consent in Writing***

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by consent in writing.

**WHEN PROCEEDINGS MAY BE HEARD*****Hearings Throughout the Year***

**3.03** (1) Proceedings may be heard throughout the year, except that during July and August and from December 24th to the following January 6th, both dates inclusive, no trial of an action shall be held unless all parties consent in writing or the court orders otherwise.

***In Absence of Opposite Party***

(2) No motion, reference, examination, assessment of costs or other matter, except a motion made without notice, shall proceed before a judge, master or other officer in the absence of the opposite party until fifteen minutes after the time fixed for it.

**COURT OFFICE HOURS**

**3.04** Court offices shall be open for business between 9:30 a.m. and 4:30 p.m. every day except a holiday but, with the consent of the registrar, an office may be open at any time where urgency requires.

**RULE 4 COURT DOCUMENTS****FORMAT**

**4.01** Every document in a proceeding shall be of good quality paper 216 millimetres by 279 millimetres in size and the text shall be printed, typewritten, written or reproduced legibly on one side only with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side.

**CONTENTS*****General Heading***

**4.02** (1) Every document in a proceeding shall have a heading in accordance with Form 4A (actions) or 4B (applications) that sets out,

- (a) the name of the court and the court file number; and
- (b) the title of the proceeding in accordance with rule 14.06 (action or application) or subrule 70.03(3) (divorce action), but in a document other than an originating process, pleading, record, order or report, where there are more than two parties to the proceeding, a short title showing the names of the first party on each side followed by the words “and others” may be used.

***Body of Document***

(2) Every document in a proceeding shall contain,

- (a) the title of the document;
- (b) its date;
- (c) where the document is filed by a party and not issued by a registrar or is an originating process, the name, address and telephone number of the solicitor filing the document or, where a party acts in person, his or her name, address for service and telephone number; and
- (d) where the document is issued by a registrar, the address of the court office in which the proceeding was commenced or, in the case of an application to the Divisional Court for judicial review, the address of the Divisional Court office.

***Backsheet***

(3) Every document in a proceeding shall have a backsheet in accordance with Form 4C that sets out,

- (a) the short title of the proceeding;
- (b) the name of the court and the court file number;
- (c) the location of the court office in which the proceeding was commenced;
- (d) the title of the document; and
- (e) the name, address and telephone number of the solicitor serving or filing the document or, where a party acts in person, his or her name, address for service and telephone number.



**CERTIFIED COPIES OF COURT DOCUMENTS**

**4.03** On the requisition of a person entitled to see a document in the court file under section 147 of the *Courts of Justice Act, 1984* and on payment of the prescribed fee the registrar shall issue a certified copy of the document.

**NOTICE TO BE IN WRITING**

**4.04** Where these rules require notice to be given, it shall be given in writing.

**ISSUING AND FILING OF DOCUMENTS*****Issuing Originating Process***

**4.05** (1) An originating process may be issued only on personal attendance in the court office by the party commencing the proceeding or by someone on the party's behalf.

***Place of Filing***

(2) All documents required to be filed in a proceeding shall be filed in the court office in which the proceeding was commenced, except where they are filed in the course of a hearing or where these rules provide otherwise.

(3) An affidavit, transcript, record or factum to be used on the hearing of a motion or application shall be filed,

(a) in the court office where the motion or application is to be heard, except where the proceeding is in the Divisional Court; or

(b) where the proceeding is in the Divisional Court, in the office of the Divisional Court at Toronto.

***Filing by Leaving in Court Office or by Mail***

(4) Any document, other than an originating process, may be filed by leaving it in the proper court office or mailing it to the proper court office, accompanied by the prescribed fee.

***Date of Filing where Filed by Mail***

(5) Where a document is filed by mail, the date of the filing stamp of the court office on the document shall be deemed to be the date of its filing, unless the court orders otherwise.

***Where Document Filed by Mail not Received***

(6) Where a court office has no record of the receipt of a document alleged to have been filed by mail, the document shall be deemed not to have been filed, unless the court orders otherwise.

**AFFIDAVITS*****Format***

**4.06** (1) An affidavit used in a proceeding shall,

(a) be in Form 4D;

(b) be expressed in the first person;

(c) state the full name of the deponent and, if the deponent is a party or a solicitor, officer, director, member or employee of a party, shall state that fact;

- (d) be divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular statement of fact; and
- (e) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations.

### ***Contents***

(2) An affidavit shall be confined to the statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except where these rules provide otherwise.

### ***Exhibits***

(3) An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit and where the exhibit,

- (a) is referred to as being attached to the affidavit, it shall be attached to and filed with the affidavit;
- (b) is referred to as being produced and shown to the deponent, it shall not be attached to the affidavit or filed with it, but shall be left with the registrar for the use of the court, and on the disposition of the matter in respect of which the affidavit was filed, the exhibit shall be returned to the solicitor or party who filed the affidavit, unless the court orders otherwise; and
- (c) is a document, a copy shall be served with the affidavit, unless it is impractical to do so.

### ***By Two or More Deponents***

(4) Where an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents make the affidavit before the same person at the same time, in which case one jurat containing the words “Sworn (or affirmed) by the above-named deponents” may be used.

### ***For a Corporation***

(5) Where these rules require an affidavit to be made by a party and the party is a corporation, the affidavit may be made for the corporation by an officer, director or employee of the corporation.

### ***For a Partnership***

(6) Where these rules require an affidavit to be made by a party and the party is a partnership, the affidavit may be made for the partnership by a member or employee of the partnership.

### ***By an Illiterate or Blind Person***

(7) Where it appears to a person taking an affidavit that the deponent is illiterate or blind, the person shall certify in the jurat that the affidavit was read in his or her presence to the deponent, that the deponent appeared to understand it, and that the deponent signed the affidavit or placed his or her mark on it in the presence of the person taking the affidavit.

### ***By a Person who does not Understand the Language***

(8) Where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly.

*Alterations*

(9) Any interlineation, erasure or other alteration in an affidavit shall be initialled by the person taking the affidavit and, unless so initialled, the affidavit shall not be used without leave of the presiding judge or officer.

**BINDING OF RECORDS, APPEAL BOOKS AND TRANSCRIPTS**

**4.07** (1) Records for motions, applications, trials and appeals shall have a light blue backsheets of 176g/m<sup>2</sup> weight cover stock.

(2) Appeal books shall be bound front and back in buff 176g/m<sup>2</sup> weight cover stock.

(3) Transcripts of evidence for use in an appeal shall be bound front and back in red 176g/m<sup>2</sup> weight cover stock, except where the transcript forms part of the appeal book or record, and where there is more than one volume of transcripts, the volumes shall be clearly numbered.

**REQUISITION**

**4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any.

**TRANSCRIPTS***Paper Size*

**4.09** (1) Evidence shall be transcribed on paper 216 millimetres by 279 millimetres in size with a margin 25 millimetres wide on the left side delimited by a vertical line.

*Heading*

(2) The name of the court or, in the case of an examiner, the examiner's name, title and location shall be stated on a single line no more than 15 millimetres from the top of the first page.

*Standards*

(3) The text shall be typewritten on thirty-two lines numbered in the margin at every fifth line.

(4) Headings, such as swearing of a witness, direct examination and cross-examination, shall be capitalized and separated from the preceding text by the space of a numbered line, and the number of lines of text on the page may be reduced by one for each heading that appears on the page.

(5) Every question shall commence on a new line and shall begin with the designation "Q.", followed, within 10 millimetres, by the question.

(6) Every answer shall commence on a new line and shall begin with the designation "A.", followed, within 10 millimetres, by the answer.

(7) The first line of a question or answer shall be indented 35 millimetres from the margin and shall be 130 millimetres in length.

(8) In a transcript of evidence taken in court, every line of a question or answer, other than the first line, shall begin at the margin and shall be 165 millimetres in length.

(9) In a transcript of evidence taken out of court, every line of a question or answer, other than the first line, shall begin 15 millimetres from the margin and shall be 150



millimetres in length, and questions shall be numbered consecutively by means of a number placed in the 15 millimetres to the right of the margin.

(10) Lines of text other than questions and answers shall be indented 35 millimetres from the margin and shall be 130 millimetres in length.

(11) Every transcript of evidence taken in court or out of court shall have,

(a) a cover page setting out,

- (i) the court,
- (ii) the title of the proceeding,
- (iii) the nature of the hearing or examination,
- (iv) the place and date of the hearing or examination,
- (v) the name of the presiding judge or officer, and
- (vi) the names of counsel; and

(b) a table of contents setting out,

- (i) the name of each witness with the page number at which the examination, cross-examination and re-examination of the witness commence,
- (ii) the page number at which the charge to the jury, the objections to the charge and the re-charge commence,
- (iii) the page number at which the reasons for judgment commence,
- (iv) a list of the exhibits with the page number at which they were made exhibits, and
- (v) at the foot of the page, the date the transcript was ordered, the date it was completed and the date the parties were notified of its completion.

## TRANSMISSION OF DOCUMENTS

**4.10** (1) Where documents filed with the court or exhibits in the custody of an officer are required for use at another location, the registrar shall send them to the registrar at the other location on a party's requisition, on payment of the prescribed fee.

(2) Documents or exhibits that have been filed at or sent to a location other than where the proceeding was commenced for a hearing at that location shall be sent by the registrar, after the completion of the hearing, to the registrar at the court office where the proceeding was commenced.

## NOTICE OF CONSTITUTIONAL QUESTION

**4.11** The notice of constitutional question referred to in section 122 of the *Courts of Justice Act, 1984* shall be in Form 4F.



## PARTIES AND JOINDER

### RULE 5 JOINDER OF CLAIMS AND PARTIES

#### JOINDER OF CLAIMS

**5.01** (1) A plaintiff or applicant may in the same proceeding join any claims the plaintiff or applicant has against an opposite party.

(2) A plaintiff or applicant may sue in different capacities and a defendant or respondent may be sued in different capacities in the same proceeding.

(3) Where there is more than one defendant or respondent, it is not necessary for each to have an interest in all the relief claimed or in each claim included in the proceeding.

#### JOINDER OF PARTIES

##### *Multiple Plaintiffs or Applicants*

**5.02** (1) Two or more persons who are represented by the same solicitor of record may join as plaintiffs or applicants in the same proceeding where,

- (a) they assert, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
- (b) a common question of law or fact may arise in the proceeding; or
- (c) it appears that their joining in the same proceeding may promote the convenient administration of justice.

##### *Multiple Defendants or Respondents*

(2) Two or more persons may be joined as defendants or respondents where,

- (a) there are asserted against them, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
- (b) a common question of law or fact may arise in the proceeding;
- (c) there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief;
- (d) damage or loss has been caused to the same plaintiff or applicant by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff or applicant, and there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief or the respective amounts for which each may be liable; or
- (e) it appears that their being joined in the same proceeding may promote the convenient administration of justice.

#### JOINDER OF NECESSARY PARTIES

##### *General Rule*

**5.03** (1) Every person whose presence is necessary to enable the court to adjudicate effectively and completely on the issues in a proceeding shall be joined as a party to the proceeding.

***Claim by Person Jointly Entitled***

(2) A plaintiff or applicant who claims relief to which any other person is jointly entitled with the plaintiff or applicant shall join, as a party to the proceeding, each person so entitled.

***Claim by Assignee of Chose in Action***

(3) In a proceeding by the assignee of a debt or other chose in action, the assignor shall be joined as a party unless,

- (a) the assignment is absolute and not by way of charge only; and
- (b) notice in writing has been given to the person liable in respect of the debt or chose in action that it has been assigned to the assignee.

***Power of Court to Add Parties***

(4) The court may order that any person who ought to have been joined as a party or whose presence as a party is necessary to enable the court to adjudicate effectively and completely on the issues in the proceeding shall be added as a party.

***Party Added as Defendant or Respondent***

(5) A person who is required to be joined as a party under subrule (1), (2) or (3) and who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

***Relief Against Joinder of Party***

(6) The court may by order relieve against the requirement of joinder under this rule.

**MISJOINDER, NON-JOINDER AND PARTIES INCORRECTLY NAMED*****Proceeding not to be Defeated***

**5.04** (1) No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the court may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce judgment without prejudice to the rights of all persons who are not parties.

***Adding, Deleting or Substituting Parties***

(2) At any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

***Adding Plaintiff or Applicant***

(3) No person shall be added as a plaintiff or applicant unless the person's consent is filed.

**RELIEF AGAINST JOINDER**

**5.05** Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the hearing or cause undue prejudice to a party, the court may,

- (a) order separate hearings;
- (b) require one or more of the claims to be asserted, if at all, in another proceeding;

- (c) order that a party be compensated by costs for having to attend, or be relieved from attending, any part of a hearing in which the party has no interest;
- (d) stay the proceeding against a defendant or respondent, pending the hearing of the proceeding against another defendant or respondent, on condition that the party against whom the proceeding is stayed is bound by the findings made at the hearing against the other defendant or respondent; or
- (e) make such other order as is just.

**RULE 6 CONSOLIDATION OR HEARING TOGETHER****WHERE ORDER MAY BE MADE**

**6.01** (1) Where two or more proceedings are pending in the same court and it appears to the court that,

- (a) they have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule,

the court may order that,

- (d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or
- (e) any of the proceedings be,
  - (i) stayed until after the determination of any other of them, or
  - (ii) asserted by way of counterclaim in any other of them.

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of listing for trial and abridge the time for placing an action on the trial list.

**DISCRETION OF PRESIDING JUDGE**

**6.02** Where the court has made an order that proceedings be heard either at the same time or one immediately after the other, the judge presiding at the hearing nevertheless has discretion to order otherwise.



**RULE 7 PARTIES UNDER DISABILITY****REPRESENTATION**

**7.01** A proceeding shall be commenced, continued or defended on behalf of,

- (a) a minor, by a litigation guardian;
- (b) a person who has been declared mentally incompetent or incapable of managing his or her affairs, by the committee of the person's estate if there is one or, if not, by the committee of the person;
- (c) a person who is mentally incompetent or incapable of managing his or her affairs, not so declared,
  - (i) where the Public Trustee is committee of the person's estate, by the Public Trustee, or
  - (ii) in any other case, by a litigation guardian;
- (d) an absentee, by the absentee's committee, if one has been appointed, or if not, by the Public Trustee, who shall be the absentee's litigation guardian,

unless the court orders or a statute provides otherwise.

**LITIGATION GUARDIAN FOR PLAINTIFF OR APPLICANT*****Court Appointment Unnecessary***

**7.02** (1) Any person who is not under disability may act, without being appointed by the court, as litigation guardian for a plaintiff or applicant who is under disability.

***Affidavit to be Filed***

(2) No person except the Official Guardian or the Public Trustee shall act as litigation guardian for a plaintiff or applicant who is under disability until the person has filed an affidavit in which the person,

- (a) consents to act as litigation guardian in the proceeding;
- (b) confirms that he or she has given written authority to a named solicitor to act in the proceeding;
- (c) states whether he or she and the person under disability are ordinarily resident in Ontario;
- (d) sets out his or her relationship, if any, to the person under disability;
- (e) states that he or she has no interest in the proceeding adverse to that of the person under disability; and
- (f) acknowledges that he or she has been informed of his or her liability to pay personally any costs awarded against him or her or against the person under disability.

**LITIGATION GUARDIAN FOR DEFENDANT OR RESPONDENT*****Generally must be Appointed by Court***

**7.03** (1) No person shall act as a litigation guardian for a defendant or respondent who is under disability until appointed by the court, except as provided in subrule (2) or (3).

***Where Minor Interested in Estate or Trust***

(2) Where a proceeding is against a minor in respect of the minor's interest in an estate or trust, the Official Guardian shall act as the litigation guardian of the minor defendant or respondent, unless the court orders otherwise.

***Defending Counterclaim***

(3) A litigation guardian for a plaintiff may defend a counterclaim without being appointed by the court.

***Motion by Person Seeking to be Litigation Guardian***

(4) A person who seeks to be the litigation guardian of a defendant or respondent under disability shall move to be appointed by the court before acting as litigation guardian.

***Motion by Plaintiff or Applicant to Appoint Litigation Guardian***

(5) Where a defendant or respondent under disability has been served with an originating process and no motion has been made under subrule (4) for the appointment of a litigation guardian, a plaintiff or applicant, before taking any further step in the proceeding, shall move for an order appointing a litigation guardian for the party under disability.

(6) At least ten days before moving for the appointment of a litigation guardian, a plaintiff or applicant shall serve a request for appointment of litigation guardian (Form 7A) on the party under disability personally or by an alternative to personal service under rule 16.03.

(7) The request may be served on the party under disability with the originating process.

(8) A motion for the appointment of a litigation guardian may be made without notice to the party under disability.

(9) A plaintiff or applicant who moves to appoint the Official Guardian or the Public Trustee as the litigation guardian shall serve the notice of motion and the material required by subrule (10) on the Official Guardian or the Public Trustee.

***Evidence on Motion to Appoint***

(10) A person who moves for the appointment of a litigation guardian shall provide evidence on the motion concerning,

- (a) the nature of the proceeding;
- (b) the date on which the cause of action arose and the date on which the proceeding was commenced;
- (c) service on the party under disability of the originating process and the request for appointment of litigation guardian;
- (d) the nature and extent of the disability;
- (e) in the case of a minor, the minor's birth date;
- (f) whether the person under disability ordinarily resides in Ontario; and

except where the proposed litigation guardian is the Official Guardian or the Public Trustee, evidence,

- (g) concerning the relationship, if any, of the proposed litigation guardian to the party under disability;

- (h) whether the proposed litigation guardian ordinarily resides in Ontario;
- (i) that the proposed litigation guardian,
  - (i) consents to act as litigation guardian in the proceeding;
  - (ii) is a proper person to be appointed;
  - (iii) has no interest in the proceeding adverse to that of the party under disability; and
  - (iv) acknowledges having been informed that he or she may incur costs that may not be recovered from another party.

### **APPOINTMENT OF OFFICIAL GUARDIAN OR PUBLIC TRUSTEE**

**7.04** Unless there is some other proper person willing and able to act as litigation guardian, the court shall appoint,

- (a) the Official Guardian, where the person under disability is a minor;
- (b) the Public Trustee, where the person under disability is mentally incompetent or is incapable of managing his or her affairs, not so declared, and there is no committee of the person's estate;
- (c) either the Official Guardian or the Public Trustee, where the person under disability is a minor and is also mentally incompetent or incapable of managing his or her affairs, not so declared, and there is no committee of the person's estate.

### **POWERS AND DUTIES OF LITIGATION GUARDIAN OR COMMITTEE**

**7.05** (1) Where a party is under disability, anything that a party in a proceeding is required or authorized to do may be done by the party's litigation guardian or committee.

(2) A litigation guardian or committee shall diligently attend to the interests of the person under disability and take all steps necessary for the protection of those interests, including the commencement and conduct of a counterclaim, crossclaim or third party claim.

(3) A litigation guardian or committee other than the Official Guardian or the Public Trustee shall be represented by a solicitor and shall instruct the solicitor in the conduct of the proceeding.

### **REMOVAL OR SUBSTITUTION OF LITIGATION GUARDIAN OR COMMITTEE**

**7.06** (1) Where, in the course of a proceeding,

- (a) a minor for whom a litigation guardian has been acting reaches the age of majority, the minor or the litigation guardian may, on filing an affidavit stating that the minor has reached the age of majority, obtain from the registrar an order to continue (Form 7B) authorizing the minor to continue the proceeding without the litigation guardian;
- (b) a party under any other disability for whom a litigation guardian or committee has been acting ceases to be under disability, the party or the litigation guardian or committee may move without notice for an order to continue the proceeding without the litigation guardian or committee,



and the order shall be served forthwith on every other party and on the litigation guardian or committee.

(2) Where it appears to the court that a litigation guardian is not acting in the best interests of the party under disability, the court may substitute the Official Guardian, the Public Trustee or any other person as litigation guardian.

### **NOTING PARTY UNDER DISABILITY IN DEFAULT**

**7.07** (1) A party under disability may not be noted in default under rule 19.01 without leave of a judge.

(2) Notice of a motion for leave under subrule (1) shall be served,

- (a) on the litigation guardian or committee of the estate of the party under disability; and
- (b) on the Official Guardian, unless,
  - (i) the Public Trustee is the committee or litigation guardian, or
  - (ii) a judge orders otherwise.

### **APPROVAL OF SETTLEMENT**

#### ***Settlement Requires Judge's Approval***

**7.08** (1) No settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a judge.

(2) Judgment may not be obtained on consent in favour of or against a party under disability without the approval of a judge.

#### ***Where no Proceeding Commenced***

(3) Where an agreement for the settlement of a claim made by or against a person under disability is reached before a proceeding is commenced in respect of the claim, approval of a judge shall be obtained on an application to the Supreme Court.

#### ***Notice to Official Guardian or Public Trustee***

(4) Notice of a motion or application for the approval of a judge under this rule shall be served,

- (a) on the Official Guardian, unless,
  - (i) the Public Trustee is the committee of the estate or litigation guardian of the party under disability, or
  - (ii) a judge orders otherwise; and
- (b) where the party under disability is a defendant or respondent, on the litigation guardian or committee.

#### ***Material Required for Approval***

(5) On a motion or application for the approval of a judge under this rule, there shall be served and filed with the notice of motion or notice of application,

- (a) an affidavit of the litigation guardian or committee setting out the material facts and the reasons supporting the proposed settlement and the position of the litigation guardian or committee in respect of the settlement;



- (b) an affidavit of the solicitor acting for the litigation guardian or committee setting out the solicitor's position in respect of the proposed settlement;
- (c) where the person under disability is a minor who is over the age of sixteen years, the minor's consent in writing, unless the judge orders otherwise; and
- (d) a copy of the proposed minutes of settlement.

**MONEY TO BE PAID INTO COURT**

- 7.09** (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless a judge orders otherwise.
- (2) Any money paid to the Official Guardian on behalf of a person under disability shall be paid into court, unless a judge orders otherwise.

**RULE 8 PARTNERSHIPS AND SOLE PROPRIETORSHIPS****PARTNERSHIPS**

**8.01** (1) A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.

(2) Subrule (1) extends to a proceeding between a partnership and one or more of its partners and to a proceeding between partnerships having one or more partners in common.

**DEFENCE**

**8.02** Where a proceeding is commenced against a partnership using the firm name, the partnership's defence shall be delivered in the firm name and no person who admits he or she was a partner at any material time may defend the proceeding separately, except with leave of the court.

**NOTICE TO ALLEGED PARTNER WHERE ENFORCEMENT SOUGHT AGAINST PARTNER**

**8.03** (1) In a proceeding against a partnership using the firm name, where a plaintiff or applicant seeks an order that will be enforceable personally against a person as a partner, the plaintiff or applicant may serve the person with the originating process, together with a notice to alleged partner (Form 8A) stating that the person was a partner at a material time specified in the notice.

(2) A person served as provided in subrule (1) shall be deemed to have been a partner at the material time, unless the person defends the proceeding separately denying that he or she was a partner at the material time.

**PERSON DEFENDING SEPARATELY**

**8.04** Where a person defends a proceeding separately,

- (a) denying that he or she was a partner at the material time; or
- (b) with leave of the court under rule 8.02,

the person becomes a party to the proceeding as a defendant or respondent, and the title of the proceeding shall be amended accordingly.

**DISCLOSURE OF PARTNERS**

**8.05** (1) Where a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose forthwith in writing the names and addresses of all the partners constituting the partnership at a time specified in the notice and, where the present address of a partner is unknown, the partnership shall disclose the last known address of that partner.

(2) Where a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its defence may be struck out.

(3) Where the name of a partner is disclosed pursuant to a notice under subrule (1) and the partner has not been served as provided in rule 8.03, the partner may be so served within fifteen days after the name is disclosed.

**ENFORCEMENT OF ORDER*****Against Partnership Property***

**8.06** (1) An order against a partnership using the firm name may be enforced against the property of the partnership.

***Against Person Served as Alleged Partner***

(2) An order against a partnership using the firm name may also be enforced, where the order or a subsequent order so provides, against any person who was served as provided in rule 8.03 and who,

- (a) under that rule, is deemed to have been a partner;
- (b) has admitted that he or she was a partner; or
- (c) has been adjudged to have been a partner,

at the material time.

***Against Person not Served as Alleged Partner***

(3) Where, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who was served as provided in rule 8.03, the party may move before a judge for leave to do so, and the judge may grant leave if the liability of the person as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge directs.

**SOLE PROPRIETORSHIPS**

**8.07** (1) Where a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person using the business name.

(2) Rules 8.01 to 8.06 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership.

**RULE 9 ESTATES AND TRUSTS****PROCEEDINGS BY OR AGAINST EXECUTOR, ADMINISTRATOR OR TRUSTEE***General Rule*

**9.01** (1) A proceeding may be brought by or against an executor, administrator or trustee as representing an estate or trust and its beneficiaries without joining the beneficiaries as parties.

*Exceptions*

- (2) Subrule (1) does not apply to a proceeding,
  - (a) to establish or contest the validity of a will;
  - (b) to remove or replace an executor, administrator or trustee;
  - (c) against an executor, administrator or trustee for fraud or misconduct; or
  - (d) for the administration of an estate or the execution of a trust by the court.

*Executor, Administrator or Trustee Refusing to be Joined*

(3) Where a proceeding is commenced by executors, administrators or trustees, any executor, administrator or trustee who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

*Beneficiaries and Others Added by Order*

(4) The court may order that any beneficiary, creditor or other interested person be made a party to a proceeding by or against an executor, administrator or trustee.

**PROCEEDING AGAINST ESTATE THAT HAS NO EXECUTOR OR ADMINISTRATOR**

**9.02** (1) Where it is sought to commence or continue a proceeding against the estate of a deceased person who has no executor or administrator, the court on motion may appoint a litigation administrator to represent the estate for the purposes of the proceeding.

(2) An order in a proceeding to which a litigation administrator is a party binds or benefits the estate of the deceased person, but has no effect on the litigation administrator in his or her personal capacity, unless a judge orders otherwise.

**REMEDIAL PROVISIONS***Proceeding Commenced before Probate or Administration*

**9.03** (1) Where a proceeding is commenced by or against a person as executor or administrator before a grant of probate or administration has been made and the person subsequently receives a grant of probate or administration, the proceeding shall be deemed to have been properly constituted from its commencement.

*Proceeding Brought by or against Estate*

- (2) A proceeding commenced by or against the estate of a deceased person,
  - (a) by naming “the estate of A.B., deceased”, “the personal representative of A.B., deceased” or any similar designation; or
  - (b) in which the wrong person is named as the personal representative,



shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the proper executor or administrator of the deceased or against a litigation administrator appointed for the purpose of the proceeding, and the title of the proceeding shall be amended accordingly.

***Proceeding Commenced in the Name of or Against a Deceased Person***

(3) A proceeding commenced in the name of or against a person who has died before its commencement shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the executor or administrator or a litigation administrator appointed for the purpose of the proceeding and the title of the proceeding shall be amended accordingly.

***Where There is an Executor or Administrator and a Litigation Administrator has been Appointed***

(4) Where it appears that a deceased person for whom a litigation administrator has been appointed had an executor or administrator at the time of the appointment, the proceeding shall not be treated as a nullity, but the court may order that the proceeding be continued against the executor or administrator and the title of the proceeding shall be amended accordingly.

***General Power***

(5) A proceeding by or against a deceased person or an estate shall not be treated as a nullity because it was not properly constituted, but the court may order that the proceeding be reconstituted by analogy to the provisions of this rule.

***Stay of Proceeding until Properly Constituted***

(6) No further step in a proceeding referred to in subrule (2), (3), (4) or (5) shall be taken until it is properly constituted and, unless it is properly constituted within a reasonable time, the court may dismiss the proceeding or make such other order as is just.

***Terms May be Imposed***

(7) On making an order under this rule, the court may impose such terms as are just, including a term that an executor or an administrator shall not be personally liable in respect of any part of the estate of a deceased person that he or she has distributed or otherwise dealt with in good faith while not aware that a proceeding had been commenced against the deceased person or the estate.

**RULE 10 REPRESENTATION ORDER****REPRESENTATION OF AN INTERESTED PERSON WHO CANNOT BE ASCERTAINED*****Proceedings in which Order May be Made***

**10.01** (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

***Order Binds Represented Persons***

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03.

***Settlement Affecting Persons who are not Parties***

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

- (a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or
- (b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons.

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03.

**REPRESENTATION OF A DECEASED PERSON**

**10.02** Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding and there is no executor or administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding.

**RELIEF FROM BINDING EFFECT OF ORDER**

**10.03** Where a person or an estate is bound by reason of a representation order made under subrule 10.01(1) or rule 10.02, an approval under subrule 10.01(3) or an order that the proceeding continue made under rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

- (a) the order or approval was obtained by fraud or non-disclosure of material facts;
- (b) the interests of the person or estate were different from those represented at the hearing; or
- (c) for some other sufficient reason the order or approval should be set aside.

**RULE 11 TRANSFER OR TRANSMISSION OF INTEREST****EFFECT OF TRANSFER OR TRANSMISSION**

**11.01** Where at any stage of a proceeding the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the proceeding shall be stayed until an order to continue the proceeding by or against the other person has been obtained.

**ORDER TO CONTINUE**

**11.02** (1) Where a transfer or transmission of the interest or liability of a party takes place while a proceeding is pending, any interested person may, on filing an affidavit verifying the transfer or transmission of interest or liability, obtain on requisition from the registrar an order to continue (Form 11A), without notice to any other party.

(2) An order to continue shall be served forthwith on every other party.

**FAILURE TO OBTAIN ORDER TO CONTINUE ACTION**

**11.03** Where a transfer or transmission of the interest of a plaintiff takes place while an action is pending and no order to continue is obtained within a reasonable time, a defendant may move to have the action dismissed for delay, and rules 24.02 to 24.05 apply with necessary modifications.



**RULE 12 REPRESENTATIVE PROCEEDINGS**

**WHERE AVAILABLE**

**12.01** Where there are numerous persons having the same interest, one or more of them may bring or defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so.

**MONEY TO BE PAID INTO COURT**

**12.02** Any money payable to or for persons having the same interest under an order in or a settlement of a representative proceeding shall be paid into court unless the court orders otherwise.

**RULE 13 INTERVENTION****LEAVE TO INTERVENE AS ADDED PARTY**

**13.01** (1) Where a person who is not a party to a proceeding claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that he or she may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between him or her and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding,

the person may move for leave to intervene as an added party.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order for pleadings and discovery as is just.

**LEAVE TO INTERVENE AS FRIEND OF THE COURT**

**13.02** Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

**LEAVE TO INTERVENE IN DIVISIONAL COURT OR COURT OF APPEAL**

**13.03** (1) Leave to intervene in the Divisional Court may be granted by a panel of the court, the Chief Justice of the High Court, the Associate Chief Justice of the High Court or a judge designated by either of them.

(2) Leave to intervene in the Court of Appeal may be granted by a panel of the court, the Chief Justice of Ontario or the Associate Chief Justice of Ontario.

## COMMENCEMENT OF PROCEEDINGS

### RULE 14 ORIGINATING PROCESS

#### HOW PROCEEDINGS COMMENCED

##### *By Issuing Originating Process*

**14.01** (1) All civil proceedings shall be commenced by the issuing of an originating process by the registrar of the court in which the proceeding is to be commenced, except where a statute provides otherwise and as provided in subrule (2).

##### *Exceptions*

(2) A counterclaim or counterpetition that is only against persons who are already parties to the main action, and a crossclaim, shall be commenced by the delivery of the pleading containing the counterclaim, counterpetition or crossclaim, and the pleading need not be issued.

##### *Where Leave Required*

(3) Where leave to commence a proceeding is required, it shall be obtained by motion.

#### PROCEEDINGS BY ACTION AS GENERAL RULE

**14.02** Every proceeding in a court shall be by action, except where a statute or these rules provide otherwise.

#### ACTIONS – BY STATEMENT OF CLAIM OR NOTICE OF ACTION

##### *Statement of Claim*

**14.03** (1) The originating process for the commencement of an action is a statement of claim (Form 14A (general) or 14B (mortgage actions)), except as provided by,

- (a) subrule (2) (notice of action);
- (b) rule 14.04 (divorce petition);
- (c) rule 27.03 (counterclaim against person not already a party);
- (d) subrule 29.02(1) (third party claim); and
- (e) rule 29.11 (fourth and subsequent party claims).

##### *Notice of Action*

(2) Where there is insufficient time to prepare a statement of claim, an action other than a divorce action may be commenced by the issuing of a notice of action (Form 14C) that contains a short statement of the nature of the claim.

(3) Where a notice of action is used, the plaintiff shall file a statement of claim (Form 14D) within thirty days after the notice of action is issued, and no statement of claim shall be filed thereafter except with the written consent of the defendant or with leave of the court obtained on notice to the defendant.

(4) The notice of action shall not be served separately from the statement of claim.

**DIVORCE ACTIONS – BY PETITION**

**14.04** The originating process for the commencement of a divorce action is a petition for divorce (Form 70A), except as provided by subrule 70.09(4) (counterpetition against person not already a party (Form 70F)).

**APPLICATIONS – BY NOTICE OF APPLICATION***Notice of Application*

**14.05** (1) The originating process for the commencement of an application is a notice of application (Form 14E or 68A).

*Application under Statute to Supreme Court or District Court*

(2) Where a statute authorizes the commencement of a proceeding by an application to the Supreme Court or District Court or a judge thereof, the proceeding may be brought by application.

*Application under Rules to Supreme Court*

(3) A proceeding may be brought in the Supreme Court by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

- (a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
- (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
- (c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;
- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (e) the declaration of a beneficial interest in or charge on land, including the nature and extent thereof, or the settling of the priority of interests or charges;
- (f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
- (g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application; or
- (h) in respect of any matter where it is unlikely that there will be any material facts in dispute.

**TITLE OF PROCEEDING**

**14.06** (1) Every originating process shall contain a title of the proceeding setting out the names of all the parties and the capacity in which they are made parties, if other than their personal capacity.

(2) In an action other than a divorce action, the title of the proceeding shall name the party commencing the action as the plaintiff and the opposite party as the defendant.



(3) In an application, the title of the proceeding shall name the party commencing the application as the applicant and the opposite party as the respondent and the notice of application shall state the statutory provision or rule, if any, under which the application is made.

**HOW ORIGINATING PROCESS ISSUED**

**14.07** (1) An originating process is issued by the registrar’s act of dating, signing and sealing it with the seal of the court and assigning to it a court file number.

(2) A copy of the originating process shall be filed in the court file when it is issued.

**TIME FOR SERVICE IN ACTIONS**

**14.08** (1) Where an action is commenced by a statement of claim, the statement of claim shall be served within six months after it is issued.

(2) Where an action is commenced by a notice of action, the notice of action and the statement of claim shall be served together within six months after the notice of action is issued.

**STRIKING OUT OR AMENDING**

**14.09** An originating process that is not a pleading may be struck out or amended in the same manner as a pleading.

**DISMISSAL OF ACTION WHERE DEFENDANT PAYS CLAIM**

**14.10** (1) Where the plaintiff’s claim is for money only, a defendant, on paying within the time prescribed for delivery of a defence or at any time before he or she is noted in default, the amount of the plaintiff’s claim and the amount claimed for costs, may on motion have the court dismiss the action.

(2) Where a defendant considers the amount claimed for costs to be excessive, he or she may pay, within the time prescribed for delivery of a defence or at any time before he or she is noted in default, the amount of the plaintiff’s claim and the sum of \$100 for costs, and the court on motion may dismiss the action and may fix and order payment of the plaintiff’s costs or may order payment of the plaintiff’s costs as assessed under Rule 58.

**RULE 15 REPRESENTATION BY SOLICITOR****WHERE SOLICITOR IS REQUIRED**

**15.01** (1) A party to a proceeding who is under disability or acts in a representative capacity shall be represented by a solicitor.

(2) A party to a proceeding that is a corporation shall be represented by a solicitor, except with leave of the court.

(3) Any other party to a proceeding may act in person or be represented by a solicitor.

**DECLARATION OF AUTHORITY TO COMMENCE PROCEEDING*****Demand for Declaration by Solicitor***

**15.02** (1) A solicitor who is named in an originating process as the solicitor for the plaintiff or applicant shall, forthwith on receipt of a demand in writing from any person who has been served with the originating process, declare in writing whether he or she commenced or authorized the commencement of the proceeding or whether his or her client authorized the commencement of the proceeding, and where the solicitor fails to comply with the demand,

- (a) the court may order the solicitor to comply with the demand;
- (b) the proceeding may be stayed; and
- (c) the solicitor may be ordered to pay the costs of the proceeding.

***Proceeding Commenced without Solicitor's Authority***

(2) Where the solicitor declares that he or she did not commence or authorize the commencement of the proceeding, the court on motion without notice may stay or dismiss the proceeding.

***Proceeding Commenced without Client's Authority***

(3) Where a solicitor has commenced a proceeding without the authority of his or her client, the court on motion may stay or dismiss the proceeding and order the solicitor to pay the costs of the proceeding.

***Where Proceeding Stayed***

(4) Where a proceeding is stayed under this rule, no further step may be taken without leave of the court.

**CHANGE IN REPRESENTATION BY PARTY*****Notice of Change of Solicitor***

**15.03** (1) A party who has a solicitor of record may change the solicitor of record by serving on the solicitor and every other party and filing, with proof of service, a notice giving the name, address and telephone number of the new solicitor.

***Notice of Appointment of Solicitor***

(2) A party acting in person may appoint a solicitor of record by serving on every other party and filing, with proof of service, a notice giving the name, address and telephone number of the solicitor of record.

***Notice of Intention to Act in Person***

(3) Subject to subrule 15.01(1) or (2), a party who has a solicitor of record may elect to act in person by serving on the solicitor and every other party and filing, with proof of service, a notice of intention to act in person that sets out the party's address for service and telephone number.

**MOTION BY SOLICITOR FOR REMOVAL AS SOLICITOR OF RECORD*****Client to be Served***

**15.04** (1) A solicitor may move, on notice to his or her client, for an order removing him or her as solicitor of record.

(2) Service of a notice of motion for the removal of a solicitor from the record and service of the order shall be made on the client personally or by an alternative to personal service under rule 16.03 or by mailing a copy to the client at his or her last known address.

***Party under Disability***

(3) Where the party for whom the solicitor is acting is under disability, the notice of motion and the order shall also be served on the litigation guardian or committee and,

(a) where the party is a minor, on the Official Guardian; and

(b) in any other case, on the Public Trustee.

***Order to Contain Client's Address***

(4) The order removing a solicitor from the record shall set out the client's last known address.

***Proof of Service of Order to be Filed***

(5) Proof of service of the order shall be filed forthwith after it is served.

**DUTY OF SOLICITOR OF RECORD**

**15.05** A solicitor of record shall act as and remains the solicitor of record for his or her client until,

(a) the client delivers a notice under rule 15.03; or

(b) an order removing the solicitor from the record has been entered, served on the client and every other party and, where required by subrule 15.04(3), in accordance with that subrule, and filed with proof of service.

**WHERE A SOLICITOR OF RECORD HAS CEASED TO PRACTISE**

**15.06** Where the solicitor of record for a party has ceased to practise law, and the party for whom the solicitor acted has not served a notice under rule 15.03, any other party may serve a document on the party by mailing a copy to the party at his or her last known address, or may move for directions.

## SERVICE

### RULE 16 SERVICE OF DOCUMENTS

#### GENERAL RULES FOR MANNER OF SERVICE

##### *Originating Process*

**16.01** (1) An originating process shall be served personally as provided in rule 16.02 or, except in the case of a divorce petition, by an alternative to personal service as provided in rule 16.03.

(2) An originating process need not be served on a party who has delivered a defence, notice of intention to defend or notice of appearance without being served.

##### *All Other Documents*

(3) No other document need be served personally, or by an alternative to personal service, unless these rules or an order require personal service or an alternative to personal service.

(4) Any document that is not required to be served personally or by an alternative to personal service,

- (a) shall be served on a party who has a solicitor of record by serving the solicitor, and service may be made in a manner provided in rule 16.05;
- (b) may be served on a party acting in person or on a person who is not a party,
  - (i) by mailing a copy of the document to the last address for service provided by the party or person or, if no such address has been provided, to the party's or person's last known address, or
  - (ii) by personal service or by an alternative to personal service.

#### PERSONAL SERVICE

**16.02** (1) Where a document is to be served personally, the service shall be made,

##### **Individual**

- (a) on an individual, other than a person under disability, by leaving a copy of the document with the individual;

##### **Municipality**

- (b) on a municipal corporation, by leaving a copy of the document with the chairman, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a solicitor for the municipality;

##### **Corporation**

- (c) on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;

##### **Board or Commission**

- (d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;



**Person outside Ontario Carrying on Business in Ontario**

- (e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person;

**Crown in Right of Canada**

- (f) on Her Majesty the Queen in right of Canada, in accordance with subsection 10(3) of the *Crown Liability Act* (Canada);

**Crown in Right of Ontario**

- (g) on Her Majesty the Queen in right of Ontario, in accordance with section 14 of the *Proceedings Against the Crown Act*;

**Attorney General**

- (h) on the Attorney General of Ontario, by leaving a copy of the document with a solicitor in the Crown Law Office (Civil Law) of the Ministry of the Attorney General;

**Absentee**

- (i) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Trustee;

**Minor**

- (j) on a minor, by leaving a copy of the document with the minor and, where the minor resides with a parent or other person having the care or lawful custody of the minor, by leaving another copy of the document with the parent or other person, but where the proceeding is in respect of the minor's interest in an estate or trust, the minor shall be served by leaving with the Official Guardian a copy of the document bearing the name and address of the minor;

**Mental Incompetent so Declared**

- (k) on a person who has been declared mentally incompetent or incapable of managing his or her affairs, by leaving a copy of the document with the committee of the person's estate if there is one or, if not, with the committee of the person;

**Mental Incompetent not so Declared**

- (l) on a person who is mentally incompetent or incapable of managing his or her affairs, not so declared,
  - (i) by leaving with the Public Trustee a copy of the document bearing the name and address of the person, and
  - (ii) by leaving a copy of the document with the person, except where the Public Trustee is committee of the person's estate and the person is,
    - (A) a patient or out-patient of a psychiatric facility under the *Mental Health Act*,
    - (B) a resident of a facility under the *Developmental Services Act*, or
    - (C) a resident of a home for special care under the *Homes for Special Care Act*,

and the attending physician is of the opinion that leaving a copy with the person would be likely to cause the person serious harm;

### **Partnership**

- (m) on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and

### **Sole Proprietorship**

- (n) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.
- (2) A person effecting personal service of a document need not produce the original document or have it in his or her possession.

## **ALTERNATIVES TO PERSONAL SERVICE**

### ***Where Available***

**16.03** (1) Where these rules or an order of the court permit service by an alternative to personal service, service shall be made in accordance with this rule.

### ***Acceptance of Service by Solicitor***

(2) Service on a party who has a solicitor may be made by leaving a copy of the document with the solicitor or an employee in the solicitor's office, but service under this subrule is effective only if the solicitor endorses on the document or a copy of it an acceptance of service and the date of the acceptance.

(3) By accepting service the solicitor shall be deemed to represent to the court that the solicitor has the authority of his or her client to accept service.

### ***Service by Mail to Last Known Address***

(4) Service of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 16A) by mail to the last known address of the person to be served, but service by mail under this subrule is effective,

- (a) only if the acknowledgment of receipt card or a post office receipt bearing a signature that purports to be the signature of the person to be served is received by the sender; and
- (b) on the date on which the sender first receives either receipt, signed as provided by clause (a).

### ***Service at Place of Residence***

(5) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day mailing another copy of the document to the person at the place of residence,

and service in this manner is effective on the fifth day after the document is mailed.

***Service on a Corporation***

(6) Where the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.

**SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE*****Where Order May be Made***

**16.04** (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

***Effective Date of Service***

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

**SERVICE ON SOLICITOR OF RECORD**

**16.05** (1) Service of a document on the solicitor of record of a party may be made,

- (a) by mailing a copy to the solicitor's office;
- (b) by leaving a copy with a solicitor or employee in the solicitor's office; or
- (c) by depositing a copy at a document exchange of which the solicitor is a member or subscriber, but service under this clause is effective only if the document or a copy of it and the copy deposited are date stamped by the document exchange in the presence of the person depositing the copy.

(2) Service of a document by depositing a copy at a document exchange under clause (1)(c) is effective on the day following the day on which it was deposited and date stamped, unless that following day is a holiday, in which case service is effective on the next day that is not a holiday.

**SERVICE BY MAIL*****Manner of Service***

**16.06** (1) Where a document is to be served by mail under these rules, a copy of the document shall be sent by prepaid first class mail or by registered or certified mail.

***Effective Date***

(2) Service of a document by mail, except under subrule 16.03(4), is effective on the fifth day after the document is mailed.

**WHERE DOCUMENT DOES NOT REACH PERSON SERVED**

**16.07** Even though a person has been served with a document in accordance with these rules, the person may show on a motion to set aside the consequences of default,



for an extension of time or in support of a request for an adjournment, that the document,

- (a) did not come to his or her notice; or
- (b) came to his or her notice only at some time later than when it was served or is deemed to have been served.

### **VALIDATING SERVICE**

**16.08** Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

- (a) the document came to the notice of the person to be served; or
- (b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

### **PROOF OF SERVICE**

#### ***Affidavit of Service***

**16.09** (1) Service of a document may be proved by an affidavit of the person who served it (Form 16B).

#### ***Sheriff's Certificate***

(2) Personal service or service under subrule 16.03(5) (service at place of residence) of a document by a sheriff or sheriff's officer may be proved by a certificate of service (Form 16C).

#### ***Solicitor's Admission or Acceptance***

(3) A solicitor's written admission or acceptance of service is sufficient proof of service and need not be verified by affidavit.

#### ***Document Exchange***

(4) Service of a document under clause 16.05(1)(c) (document exchange) may be proved by the date stamp on the document or a copy of it.



**RULE 17 SERVICE OUTSIDE ONTARIO****DEFINITION**

**17.01** In rules 17.02 to 17.06, “originating process” includes a counterclaim against only parties to the main action, and a crossclaim.

**SERVICE OUTSIDE ONTARIO WITHOUT LEAVE**

**17.02** A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

**Property in Ontario**

- (a) in respect of real or personal property in Ontario;

**Administration of Estates**

- (b) in respect of the administration of the estate of a deceased person,
  - (i) in respect of real property in Ontario, or
  - (ii) in respect of personal property, where the deceased person, at the time of death, was resident in Ontario;

**Interpretation of an Instrument**

- (c) for the interpretation, rectification, enforcement or setting aside of a deed, will, contract or other instrument in respect of,
  - (i) real or personal property in Ontario, or
  - (ii) the personal property of a deceased person who, at the time of death, was resident in Ontario;

**Trustee Where Assets Include Property in Ontario**

- (d) against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property in Ontario;

**Mortgage on Property in Ontario**

- (e) for foreclosure, sale, payment, possession or redemption in respect of a mortgage, charge or lien on real or personal property in Ontario;

**Contracts**

- (f) in respect of a contract where,
  - (i) the contract was made in Ontario,
  - (ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario,
  - (iii) the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract, or
  - (iv) a breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario;

**Tort Committed in Ontario**

- (g) in respect of a tort committed in Ontario;

**Damage Sustained in Ontario**

- (h) in respect of damage sustained in Ontario arising from a tort or breach of contract, wherever committed;

**Injunctions**

- (i) for an injunction ordering a party to do, or refrain from doing, anything in Ontario or affecting real or personal property in Ontario;

**Support**

- (j) for support;

**Custody or Access**

- (k) for custody of or access to a minor;

**Invalidity of Marriage**

- (l) to declare the invalidity of a marriage;

**Judgment of Court Outside Ontario**

- (m) on a judgment of a court outside Ontario;

**Authorized by Statute**

- (n) authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario;

**Necessary or Proper Party**

- (o) against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario;

**Person Resident or Carrying on Business in Ontario**

- (p) against a person ordinarily resident or carrying on business in Ontario;

**Counterclaim, Crossclaim or Third Party Claim**

- (q) properly the subject matter of a counterclaim, crossclaim or third or subsequent party claim under these rules; or

**Taxes**

- (r) made by or on behalf of the Crown or a municipal corporation to recover money owing for taxes or other debts due to the Crown or the municipality.

**SERVICE OUTSIDE ONTARIO WITH LEAVE**

**17.03** (1) In any case to which rule 17.02 does not apply, the court may grant leave to serve an originating process or notice of a reference outside Ontario.

(2) A motion for leave to serve a party outside Ontario may be made without notice, and shall be supported by an affidavit or other evidence showing in which place or country the person is or probably may be found, and the grounds on which the motion is made.

**ADDITIONAL REQUIREMENTS FOR SERVICE OUTSIDE ONTARIO**

**17.04** (1) An originating process served outside Ontario without leave shall disclose the facts and specifically refer to the provision of rule 17.02 relied on in support of such service.

(2) Where an originating process is served outside Ontario with leave of the court, the originating process shall be served together with the order granting leave and any affidavit or other evidence used to obtain the order.

**MANNER OF SERVICE OUTSIDE ONTARIO**

**17.05** (1) An originating process or other document to be served outside Ontario may be served in the manner provided by these rules for service in Ontario, or in the manner prescribed by the law of the jurisdiction where service is made if that manner of service could reasonably be expected to come to the notice of the person to be served.

(2) Service may be proved in the manner prescribed by these rules for proof of service in Ontario or in the manner provided by the law of the jurisdiction where service was made.

**MOTION TO SET ASIDE SERVICE OUTSIDE ONTARIO**

**17.06** (1) A party who has been served with an originating process outside Ontario may move, before delivering a defence, notice of intent to defend or notice of appearance,

- (a) for an order setting aside the service and any order that authorized the service; or
- (b) for an order staying the proceeding.

(2) Where the court is satisfied that,

- (a) service outside Ontario is not authorized by these rules;
- (b) an order granting leave to serve outside Ontario should be set aside; or
- (c) Ontario is not a convenient forum for the hearing of the proceeding,

the court may make an order under subrule (1) or such other order as is just.

(3) Where on a motion under subrule (1) the court concludes that service outside Ontario is not authorized by these rules, but the case is one in which it would have been appropriate to grant leave to serve outside Ontario under rule 17.03, the court may make an order validating the service.

(4) The making of a motion under subrule (1) is not in itself a submission to the jurisdiction of the court over the moving party.

**RULE 18 TIME FOR DELIVERY OF STATEMENT OF DEFENCE****TIME FOR DELIVERY OF STATEMENT OF DEFENCE**

**18.01** A statement of defence (Form 18A) shall be delivered,

- (a) within twenty days after service of the statement of claim, where the defendant is served in Ontario;
- (b) within forty days after service of the statement of claim, where the defendant is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the statement of claim, where the defendant is served anywhere else,

except as provided in rule 18.02 or subrule 19.01(5) (late delivery of defence) or 27.04(2) (counterclaim against plaintiff and non-party).

**NOTICE OF INTENT TO DEFEND**

**18.02** (1) A defendant who is served with a statement of claim and intends to defend the action may deliver a notice of intent to defend (Form 18B) within the time prescribed for delivery of a statement of defence.

(2) A defendant who delivers a notice of intent to defend within the prescribed time is entitled to ten days, in addition to the time prescribed by rule 18.01, within which to deliver a statement of defence.

(3) Subrules (1) and (2) apply, with necessary modifications, to,

- (a) a defendant to a counterclaim who is not already a party to the main action and who has been served with a statement of defence and counterclaim; and
- (b) a third party who has been served with a third party claim.



DISPOSITION WITHOUT TRIAL

RULE 19 DEFAULT PROCEEDINGS

NOTING DEFAULT

*Where no Defence Delivered*

**19.01** (1) Where a defendant fails to deliver a statement of defence within the prescribed time, the plaintiff may, on filing proof of service of the statement of claim, require the registrar to note the defendant in default.

*Where Defence Struck Out*

- (2) Where the statement of defence of a defendant has been struck out,
- (a) without leave to deliver another; or
  - (b) with leave to deliver another, and the defendant has failed to deliver another within the time allowed,

the plaintiff may, on filing a copy of the order striking out the statement of defence, require the registrar to note the defendant in default.

*Noting of Default by Co-defendant*

(3) Where a plaintiff has failed to require the registrar to note a defendant in default, the court on motion of any other defendant who has delivered a statement of defence, on notice to the plaintiff, may order the registrar to note the other defendant in default.

*Party under Disability*

(4) A defendant under disability may not be noted in default without leave of a judge obtained on motion under rule 7.07.

*Late Delivery of Defence*

(5) A defendant may deliver a statement of defence at any time before he or she has been noted in default under this rule.

CONSEQUENCES OF NOTING DEFAULT

- 19.02** (1) A defendant who has been noted in default,
- (a) is deemed to admit the truth of all allegations of fact made in the statement of claim; and
  - (b) shall not deliver a statement of defence or take any other step in the action, other than a motion to set aside the noting of default or any judgment obtained by reason of the default, except with leave of the court or the consent of the plaintiff.

(2) Notwithstanding the provisions of any other rule, where a defendant has been noted in default, any step in the action that requires the consent of a defendant may be taken without the consent of the defendant in default.

(3) Notwithstanding the provisions of any other rule, a defendant who has been noted in default is not entitled to notice of any step in the action and need not be served with any document in the action, except where the court orders otherwise or where a party requires the personal attendance of the defendant, and except as provided in,

- (a) subrule 26.04(3) (amended pleading);

- (b) subrule 27.04(3) (counterclaim);
- (c) subrule 28.04(2) (crossclaim);
- (d) subrule 29.11(2) (fourth or subsequent party claim);
- (e) subrule 54.08(1) (motion for confirmation of report on reference);
- (f) subrule 54.09(1) (report on reference);
- (g) subrule 54.09(3) (motion to oppose confirmation of report on reference);
- (h) subrule 55.02(2) (notice of hearing for directions on reference);
- (i) clause 64.03(8)(a) (notice of taking of account in foreclosure action);
- (j) subrule 64.03(24) (notice of reference in action converted from foreclosure to sale);
- (k) subrule 64.04(7) (notice of taking of account in sale action);
- (l) subrule 64.06(8) (notice of reference in mortgage action);
- (m) subrule 64.06(17) (report on reference in mortgage action);
- (n) subrule 64.06(21) (notice of change of account);
- (o) subrule 70.10(3) (counterpetition);
- (p) rule 70.19 (notice of listing for trial); and
- (q) subrule 70.23(2) (decree nisi)

### SETTING ASIDE THE NOTING OF DEFAULT

**19.03** (1) The noting of default may be set aside by the court on such terms as are just.

(2) Where a defendant delivers a statement of defence with the consent of the plaintiff under clause 19.02(1)(b), the noting of default against the defendant shall be deemed to have been set aside.

### BY SIGNING DEFAULT JUDGMENT

#### *Where Available*

**19.04** (1) Where a defendant has been noted in default, the plaintiff may require the registrar to sign judgment against the defendant in respect of a claim for,

- (a) a debt or liquidated demand in money, including interest if claimed in the statement of claim (Form 19A);
- (b) the recovery of possession of land (Form 19B);
- (c) the recovery of chattels (Form 19C); or
- (d) foreclosure, sale or redemption of a mortgage (Forms 64B to 64D, 64G to 64K and 64M).

#### *Requisition for Default Judgment*

(2) Before the signing of default judgment, the plaintiff shall file with the registrar a requisition for default judgment (Form 19D),

- (a) stating that the claim comes within the class of cases for which default judgment may properly be signed;

- (b) stating whether there has been any partial payment of the claim and setting out the date and amount of any partial payment;
- (c) where the plaintiff has claimed prejudgment interest in the statement of claim, setting out how the interest is calculated;
- (d) where the plaintiff has claimed postjudgment interest in the statement of claim at a rate other than as provided in section 139 of the Courts of Justice Act, 1984, setting out the rate; and
- (e) stating whether the plaintiff wishes costs to be fixed by the registrar or assessed.

***Registrar may Decline to Sign Default Judgment***

- (3) Where the registrar is uncertain,
  - (a) whether the claim comes within the class of cases for which default judgment may properly be signed; or
  - (b) of the amount or rate that is properly recoverable for prejudgment or postjudgment interest,

the registrar may decline to sign default judgment and the plaintiff may make a motion to the court for default judgment.

***Where Claim Partially Satisfied***

- (4) Where the claim has been partially satisfied, the default judgment shall be confined to the remainder of the claim.

***Postjudgment Interest***

- (5) Where the registrar signs default judgment and the plaintiff has claimed postjudgment interest in the statement of claim at a rate other than as provided in section 139 of the *Courts of Justice Act, 1984*, the default judgment shall provide for postjudgment interest at the rate claimed.

***Costs***

- (6) On signing a default judgment, the registrar shall fix the costs under Tariff A to which the plaintiff is entitled against the defendant in default and shall include the costs in the judgment unless,

- (a) the judgment directs a reference; or
  - (b) the plaintiff states in the requisition that he or she wishes to have the costs assessed,

in which case the judgment shall include costs to be determined on the reference or on assessment.

**BY PROCEEDING TO TRIAL**

**19.05** Where a defendant has been noted in default, the plaintiff shall proceed to trial in respect of a claim for,

- (a) unliquidated damages, unless the amount of the damages has been agreed upon; or
- (b) a divorce or a declaration of the invalidity of a marriage.

**BY MOTION FOR JUDGMENT**

**19.06** (1) Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed or for which the plaintiff is not required by rule 19.05 to proceed to trial, and the judge may grant judgment accordingly.

(2) Where an action proceeds to trial, a motion for judgment on the statement of claim against a defendant noted in default may be made at the trial.

**FACTS MUST ENTITLE PLAINTIFF TO JUDGMENT**

**19.07** A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

**EFFECT OF DEFAULT JUDGMENT**

**19.08** A judgment obtained against a defendant who has been noted in default does not prevent the plaintiff from proceeding against the same defendant for any other relief.

**SETTING ASIDE DEFAULT JUDGMENT**

**19.09** (1) A judgment against a defendant who has been noted in default that is signed by the registrar or granted by the court on motion under rule 19.04 may be set aside or varied by the court on such terms as are just.

(2) A judgment against a defendant who has been noted in default that is obtained,

(a) where the plaintiff has proceeded to trial under rule 19.05; or

(b) on a motion for judgment on the statement of claim under rule 19.06,

may be set aside or varied by a judge on such terms as are just.

(3) On setting aside a judgment under subrule (1) or (2) the court or judge may also set aside the noting of default under rule 19.03.

**APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS**

**19.10** Rules 19.01 to 19.09 apply, with necessary modifications, to counterclaims, crossclaims and third party claims, subject to rules 28.07 (default of defence to cross-claim) and 29.07 (default of defence to third party claim).



RULE 20 SUMMARY JUDGMENT

WHERE AVAILABLE

*To Plaintiff*

**20.01** (1) A plaintiff may, after the defendant has delivered a statement of defence or served a notice of motion, move with supporting affidavit material or other evidence for summary judgment on all or part of the claim in the statement of claim.

(2) The plaintiff may move, without notice, for leave to serve a notice of motion for summary judgment together with the statement of claim, and leave may be given where special urgency is shown, subject to such directions as are just.

*To Defendant*

(3) A defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

AFFIDAVITS

**20.02** An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01(4), but on the hearing of the motion an adverse inference may be drawn, if appropriate, from the failure of a party to provide the evidence of persons having personal knowledge of contested facts.

FACTUMS REQUIRED

**20.03** On a motion for summary judgment, each party shall serve on every other party to the motion a factum consisting of a concise statement, without argument, of the facts and law relied on by the party, and file it, with proof of service, in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing.

DISPOSITION OF MOTION

*General*

**20.04** (1) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest on the mere allegations or denials of his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

(2) Where the court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the court shall grant summary judgment accordingly.

*Only Genuine Issue Is Amount*

(3) Where the court is satisfied that the only genuine issue is the amount to which the moving party is entitled, the court may order a trial of that issue or grant judgment with a reference to determine the amount.

*Only Genuine Issue Is Question Of Law*

(4) Where the court is satisfied that the only genuine issue is a question of law, the court may determine the question and grant judgment accordingly, but where the motion is made to a master, it shall be adjourned to be heard by a judge.

***Only Claim Is For An Accounting***

(5) Where the plaintiff is the moving party and claims an accounting and the defendant fails to satisfy the court that there is a preliminary issue to be tried, the court may grant judgment on the claim with a reference to take the accounts.

**WHERE A TRIAL IS NECESSARY*****Powers of Court***

**20.05** (1) Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried and may order that the action proceed to trial by being,

- (a) placed forthwith, or within a specified time, on a list of cases requiring speedy trial; or
- (b) set down in the normal course, or within a specified time, for trial.

(2) At the trial the facts so specified shall be deemed to be established and the trial shall be conducted accordingly, unless the trial judge orders otherwise to prevent injustice.

***Imposition of Terms***

(3) Where an action is ordered to proceed to trial, in whole or in part, the court may give such directions or impose such terms as are just, including an order,

- (a) for payment into court of all or part of the claim;
- (b) for security for costs; and
- (c) that the nature and scope of discovery, if any, be limited to matters not covered by the affidavits filed on the motion and any cross-examinations on them, and that the affidavits and cross-examinations may be used at trial in the same manner as an examination for discovery.

***Failure to Comply with Order***

(4) Where a party fails to comply with an order for payment into court or for security for costs, the court on motion of the opposite party may dismiss the action, strike out the statement of defence or make such other order as is just.

(5) Where on a motion under subrule (4) the statement of defence is struck out, the defendant shall be deemed to be noted in default.

**COSTS SANCTIONS FOR IMPROPER USE OF RULE*****Where Motion Fails***

**20.06** (1) Where, on a motion for summary judgment, the moving party obtains no relief, the court shall fix the opposite party's costs of the motion on a solicitor and client basis and order the moving party to pay them forthwith unless the court is satisfied that the making of the motion, although unsuccessful, was nevertheless reasonable.

***Where A Party Has Acted In Bad Faith***

(2) Where it appears to the court that a party to a motion for summary judgment has acted in bad faith or primarily for the purpose of delay, the court may fix the costs of the motion on a solicitor and client basis and order the party to pay them forthwith.

**EFFECT OF SUMMARY JUDGMENT**

**20.07** A plaintiff who obtains summary judgment may proceed against the same defendant for any other relief.

**STAY OF EXECUTION**

**20.08** Where it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, crossclaim or third party claim, the court may so order on such terms as are just.

**APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS**

**20.09** Rules 20.01 to 20.08 apply, with necessary modifications, to counterclaims, crossclaims and third party claims.

**RULE 21 DETERMINATION OF AN ISSUE BEFORE TRIAL****WHERE AVAILABLE*****To Any Party on a Question of Law***

**21.01** (1) A party may move before a judge,

- (a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or
- (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

(2) No evidence is admissible on a motion,

- (a) under clause (1)(a), except with leave of a judge or on consent of the parties;
- (b) under clause (1)(b).

***To Defendant***

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

**Jurisdiction**

- (a) the court has no jurisdiction over the subject matter of the action;

**Capacity**

- (b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

**Another Proceeding Pending**

- (c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

**Action Frivolous, Vexatious or Abuse of Process**

- (d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

**MOTION TO BE MADE PROMPTLY**

**21.02** A motion under rule 21.01 shall be made promptly and a failure to do so may be taken into account by the court in awarding costs.

**FACTUMS REQUIRED**

**21.03** On a motion under rule 21.01, each party shall serve on every other party to the motion a factum consisting of a concise statement, without argument, of the facts and law relied on by the party, and file it, with proof of service, in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing.



**RULE 22 SPECIAL CASE****WHERE AVAILABLE**

**22.01** (1) Where the parties to a proceeding concur in stating a question of law in the form of a special case for the opinion of the court, any party may move before a judge to have the special case determined.

(2) Where the judge is satisfied that the determination of the question may dispose of all or part of the proceeding, substantially shorten the hearing or result in a substantial saving of costs, the judge may hear and determine the special case.

**FACTUMS REQUIRED**

**22.02** On a motion under rule 22.01, each party shall serve on every other party to the motion a factum consisting of a concise statement, without argument, of the facts and law relied on by the party, and file it, with proof of service, in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing.

**REMOVAL INTO COURT OF APPEAL**

**22.03** (1) A motion under rule 22.01 may be made to a judge of the Court of Appeal for leave to have a special case determined in the first instance by that court and the judge may grant leave where subrule 22.01(2) is satisfied and where the special case raises an issue in respect of which,

- (a) there are conflicting decisions of judges of the High Court and there is no decision of an appellate court in Ontario;
- (b) there is a conflict between decisions of an appellate court in Ontario and an appellate court of another province, or between decisions of appellate courts of two or more other provinces; or
- (c) one of the parties seeks to establish that a decision of an appellate court in Ontario should not be followed.

(2) A judge who grants leave under subrule (1) may give directions in respect of the time and form in which the case is to be listed for hearing and the exchange and filing of factums, and subject to any such directions, Rule 61 (appeals to an appellate court) applies with necessary modifications.

**FORM OF SPECIAL CASE**

**22.04** A special case (Form 22A) shall,

- (a) set out concisely the material facts, as agreed on by the parties, that are necessary to enable the court to determine the question stated;
- (b) refer to and include a copy of any documents that are necessary to determine the question;
- (c) set out the relief sought, as agreed on by the parties, on the determination of the question of law; and
- (d) be signed by the solicitors for the parties.

**HEARING OF SPECIAL CASE**

**22.05** (1) On the hearing of a special case the court may draw any reasonable inference from the facts agreed on by the parties and documents referred to in the special case.

(2) On the determination of the question of law the court may make an order or grant judgment accordingly.

**RULE 23 DISCONTINUANCE AND WITHDRAWAL****DISCONTINUANCE BY PLAINTIFF**

- 23.01** (1) A plaintiff may discontinue all or part of an action against any defendant,
- (a) before the close of pleadings, by serving on all parties who have been served with the statement of claim a notice of discontinuance (Form 23A) and filing the notice with proof of service;
  - (b) after the close of pleadings, with leave of the court; or
  - (c) at any time, by filing the consent in writing of all parties.
- (2) Where a party to an action is under disability, the action may be discontinued by or against that party only with leave of a judge, on notice to,
- (a) the Official Guardian, unless,
    - (i) the Public Trustee is committee of the estate or litigation guardian of the party, or;
    - (ii) a judge orders otherwise; and
  - (b) where the party under disability is a defendant, the litigation guardian or committee of the estate.

**EFFECT OF DISCONTINUANCE ON COUNTERCLAIM**

**23.02** Where an action is discontinued against a defendant who has counterclaimed, the defendant may deliver within thirty days after the discontinuance a notice of election to proceed with the counterclaim (Form 23B), and if the defendant fails to do so, the counterclaim shall be deemed to be discontinued without costs.

**EFFECT OF DISCONTINUANCE ON CROSSCLAIM OR THIRD PARTY CLAIM**

**23.03** Where an action is discontinued against a defendant who has crossclaimed or made a third party claim, the crossclaim or third party claim shall be deemed to be dismissed with costs thirty days after the discontinuance unless the court orders otherwise during the thirty day period.

**EFFECT OF DISCONTINUANCE ON SUBSEQUENT ACTION**

**23.04** (1) The discontinuance of all or part of an action is not a defence to a subsequent action, unless the order giving leave to discontinue or a consent filed by the parties provides otherwise.

(2) Where a plaintiff has discontinued and is liable for costs of an action, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest before payment of the costs of the discontinued action, the court may order a stay of the subsequent action until the costs of the discontinued action have been paid.

**COSTS OF DISCONTINUANCE**

- 23.05** Where a plaintiff discontinues an action against a defendant,
- (a) the defendant is entitled to the costs of the action; and

- (b) where the defendant has made a crossclaim or third party claim that is deemed to be dismissed under rule 23.03, the defendant is entitled to recover from the plaintiff,
  - (i) the costs payable under rule 23.03, and
  - (ii) the defendant's own costs of the crossclaim or third party claim,

unless the court orders otherwise.

#### **WITHDRAWAL BY DEFENDANT**

**23.06** (1) A defendant may withdraw all or part of the statement of defence with respect to any plaintiff at any time by delivering to all parties a notice of withdrawal of defence (Form 23C), but,

- (a) where the defendant has crossclaimed or made a third party claim, leave to withdraw must be obtained from the court; and
- (b) where the defendant seeks to withdraw an admission in the statement of defence, rule 51.05 (withdrawal of admission) applies.

(2) Where a defendant withdraws the whole of the statement of defence, the defendant shall be deemed to be noted in default.

#### **APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS**

**23.07** Rules 23.01 to 23.06 apply, with necessary modifications, to counterclaims, crossclaims and third party claims.



**RULE 24 DISMISSAL OF ACTION FOR DELAY****WHERE AVAILABLE**

**24.01** A defendant who is not in default under these rules or an order of the court may move to have an action dismissed for delay where the plaintiff has failed,

- (a) to serve the statement of claim on all the defendants within the prescribed time;
- (b) to have noted in default any defendant who has failed to deliver a statement of defence, within thirty days after the default;
- (c) to set the action down for trial within six months after the close of pleadings; or
- (d) to move for leave to restore to the trial list an action that has been struck off the trial list, within thirty days after the action was struck off.

**NOTICE WHERE PLAINTIFF UNDER DISABILITY**

**24.02** Where the plaintiff is under disability, notice of a motion to dismiss the action for delay shall be served on,

- (a) the litigation guardian or committee of the estate of the plaintiff; and
- (b) on the Official Guardian, unless,
  - (i) the Public Trustee is committee of the estate or litigation guardian of the plaintiff, or
  - (ii) a judge orders otherwise.

**EFFECT OF DISMISSAL ON COUNTERCLAIM**

**24.03** Where an action against a defendant who has counterclaimed is dismissed for delay, the defendant may within thirty days after the dismissal deliver a notice of election to proceed with the counterclaim (Form 23B), and if the defendant fails to do so, the counterclaim shall be deemed to be discontinued without costs.

**EFFECT OF DISMISSAL ON CROSSCLAIM OR THIRD PARTY CLAIM**

**24.04** Where an action against a defendant who has crossclaimed or made a third party claim is dismissed for delay,

- (a) the crossclaim or third party claim shall be deemed to be dismissed with costs; and
- (b) the defendant may recover those costs and his or her own costs of the crossclaim or third party claim from the plaintiff,

unless the court orders otherwise.

**EFFECT ON SUBSEQUENT ACTION**

**24.05** (1) The dismissal of an action for delay is not a defence to a subsequent action unless the order dismissing the action provides otherwise.

(2) Where a plaintiff's action has been dismissed for delay with costs, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest before payment of the costs of the

dismissed action, the court may order a stay of the subsequent action until the costs of the dismissed action have been paid.

**APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS**

**24.06** Rules 24.01 to 24.05 apply, with necessary modifications, to counterclaims, crossclaims and third party claims.

## PLEADINGS

### RULE 25 PLEADINGS IN AN ACTION

#### PLEADINGS REQUIRED OR PERMITTED

##### *Action Commenced by Statement of Claim or Notice of Action*

**25.01** (1) In an action commenced by statement of claim or notice of action, pleadings shall consist of the statement of claim (Form 14A, 14B or 14D), statement of defence (Form 18A) and reply (Form 25A), if any.

##### *Counterclaim*

(2) In a counterclaim, pleadings shall consist of the counterclaim (Form 27A or 27B), defence to counterclaim (Form 27C) and reply to defence to counterclaim (Form 27D), if any.

##### *Crossclaim*

(3) In a crossclaim, pleadings shall consist of the crossclaim (Form 28A), defence to crossclaim (Form 28B) and reply to defence to crossclaim (Form 28C), if any.

##### *Third Party Claim*

(4) In a third party claim, pleadings shall consist of the third party claim (Form 29A), third party defence (Form 29B) and reply to third party defence (Form 29C), if any.

##### *Pleading Subsequent to Reply*

(5) No pleading subsequent to a reply shall be delivered without the consent in writing of the opposite party or leave of the court.

#### FORM OF PLEADINGS

**25.02** Pleadings shall be divided into paragraphs numbered consecutively, and each allegation shall, so far as is practical, be contained in a separate paragraph.

#### SERVICE OF PLEADINGS

##### *Who is to be Served*

**25.03** (1) Every pleading shall be served on every person who is, at the time of service, a party to the main action or to a counterclaim, crossclaim or third or subsequent party claim in the main action.

##### *Service on Added Parties*

(2) Where a person is added as a party to an action, the party adding him or her shall serve on the added party all the pleadings previously delivered in the main action and in any counterclaim, crossclaim or third or subsequent party claim in the main action, unless the court orders otherwise.

##### *Where Personal Service Not Required*

(3) Where a pleading is an originating process, personal service on parties other than an opposite party is not required.

**TIME FOR DELIVERY OF PLEADINGS*****Statement of Claim***

**25.04** (1) The time for service of a statement of claim is prescribed by rule 14.08.

***Statement of Defence***

(2) The time for delivery of a statement of defence is prescribed by rule 18.01.

***Reply***

(3) A reply, if any, shall be delivered within ten days after service of the statement of defence except where the defendant counterclaims, in which case a reply and defence to counterclaim, if any, shall be delivered within twenty days after service of the statement of defence and counterclaim.

***In a Counterclaim***

(4) The time for delivery of pleadings in a counterclaim is prescribed by Rule 27.

***In a Crossclaim***

(5) The time for delivery of pleadings in a crossclaim is prescribed by Rule 28.

***In a Third Party Claim***

(6) The time for delivery of pleadings in a third party claim is prescribed by Rule 29.

**CLOSE OF PLEADINGS**

**25.05** Pleadings in an action are closed when,

- (a) the plaintiff has delivered a reply to every defence in the action or the time for delivery of a reply has expired; and
- (b) every defendant who is in default in delivering a defence in the action has been noted in default.

**RULES OF PLEADING—APPLICABLE TO ALL PLEADINGS*****Material Facts***

**25.06** (1) Every pleading shall contain a concise statement of the material facts on which the party relies for his or her claim or defence, but not the evidence by which those facts are to be proved.

***Pleading Law***

(2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded.

***Condition Precedent***

(3) Allegations of the performance or occurrence of all conditions precedent to the assertion of a claim or defence of a party are implied in the party's pleading and need not be set out, and where the opposite party intends to contest the performance or occurrence of a condition precedent, the opposite party shall specify in his or her pleading the condition and its non-performance or non-occurrence.

***Inconsistent Pleading***

(4) A party may make inconsistent allegations in a pleading where the pleading makes it clear that they are being pleaded in the alternative.



(5) An allegation that is inconsistent with an allegation made in a party's previous pleading or that raises a new ground of claim shall not be made in a subsequent pleading but by way of amendment to the previous pleading.

#### *Notice*

(6) Where notice to a person is alleged, it is sufficient to allege notice as a fact unless the form or a precise term of the notice is material.

#### *Documents or Conversations*

(7) The effect of a document or the purport of a conversation, if material, shall be pleaded as briefly as possible, but the precise words of the document or conversation need not be pleaded unless those words are themselves material.

#### *Nature of Act or Condition of Mind*

(8) Where fraud, misrepresentation or breach of trust is alleged, the pleading shall contain full particulars, but malice, intent or knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.

#### *Claim for Relief*

(9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,

- (a) the amount claimed for each claimant in respect of each claim shall be stated; and
- (b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial.

#### *Subsequent Facts*

(10) A party may plead a fact that has occurred after the commencement of the action and, where the fact occurs after the delivery of the pleading, the party may, with leave, deliver an amended pleading, and leave may be granted even though the fact gives rise to a new claim or defence.

### **RULES OF PLEADING—APPLICABLE TO DEFENCES**

#### *Admissions*

**25.07** (1) In a defence, a party shall admit every allegation of fact in the opposite party's pleading that the party does not dispute.

#### *Denials*

(2) Subject to subrule (6), all allegations of fact that are not denied in a party's defence shall be deemed to be admitted unless the party pleads that he or she has no knowledge in respect of the fact.

#### *Different Version of Facts*

(3) Where a party intends to prove a different version of the facts than that pleaded by the opposite party, a denial of the version so pleaded is not sufficient, but the party shall plead his or her own version of the facts in the defence.

#### *Affirmative Defences*

(4) In a defence, a party shall plead any matter on which the party intends to rely to defeat the claim of the opposite party and which, if not specifically pleaded, might take

the opposite party by surprise or raise an issue that has not been raised in the opposite party's pleading.

### ***Effect of Denial of Agreement***

(5) Where an agreement is alleged in a pleading, a denial of the agreement by the opposite party shall be construed only as a denial of the making of the agreement or of the facts from which the agreement may be implied by law, and not as a denial of the legality or sufficiency in law of the agreement.

### ***Damages***

(6) In an action for damages, the amount of damages shall be deemed to be in issue unless specifically admitted.

## **WHERE A REPLY IS NECESSARY**

### ***Different Version of Facts***

**25.08** (1) A party who intends to prove a different version of the facts than that pleaded in the opposite party's defence shall deliver a reply setting out the different version, unless it has already been pleaded in his or her claim.

### ***Affirmative Reply***

(2) A party who intends to rely in response to a defence on any matter that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been raised by a previous pleading shall deliver a reply setting out that matter, subject to subrule 25.06(5) (inconsistent claims or new claims).

### ***Reply Only Where Required***

(3) A party shall not deliver a reply except where required to do so by subrule (1) or (2).

### ***Deemed Denial of Allegations Where No Reply***

(4) A party shall be deemed to deny the allegations of fact made in the defence of the opposite party where he or she does not deliver a reply within the prescribed time.

## **RULES OF PLEADING—APPLICABLE TO REPLIES**

### ***Admissions***

**25.09** (1) A party who delivers a reply shall admit every allegation of fact in the opposite party's defence that the party does not dispute.

### ***Effect of Denial of Agreement***

(2) Where an agreement is alleged in a defence, a denial of the agreement in the opposite party's reply, or a deemed denial under subrule 25.08(4), shall be construed only as a denial of the making of the agreement or of the facts from which the agreement may be implied by law, and not as a denial of the legality or sufficiency in law of the agreement.

## **PARTICULARS**

**25.10** Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within seven days, the court may order particulars to be delivered within a specified time.

**STRIKING OUT A PLEADING OR OTHER DOCUMENT**

**25.11** The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court.

**RULE 26 AMENDMENT OF PLEADINGS****GENERAL POWER OF COURT**

**26.01** On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

**WHEN AMENDMENTS MAY BE MADE**

**26.02** A party may amend his or her pleading,

- (a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;
- (b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or
- (c) with leave of the court.

**HOW AMENDMENTS MADE**

**26.03** (1) An amendment to a pleading shall be made on the face of the copy filed in the court office, except that where the amendment is so extensive as to make the amended pleading difficult or inconvenient to read the party shall file a fresh copy of the original pleading as amended, bearing the date of the original pleading and the title of the pleading preceded by the word "amended".

(2) An amendment to a pleading shall be underlined so as to distinguish the amended wording from the original, and the registrar shall note on the amended pleading the date on which, and the authority by which, the amendment was made.

(3) Where a pleading has been amended more than once each subsequent amendment shall be underlined with an additional line for each occasion.

**SERVICE OF AMENDED PLEADING*****Service on Every Party to Action and Related Actions***

**26.04** (1) An amended pleading shall be served forthwith on every person who is, at the time of service, a party to the main action or to a counterclaim, crossclaim or third party claim in the main action, unless the court orders otherwise.

(2) Proof of service of an amended pleading other than an originating process shall be filed forthwith after it is served.

***Amended Originating Process***

(3) Where an amended pleading is an originating process,

- (a) it need not be served personally on a party who was served with the original pleading and responded to it; and
- (b) it shall be served personally or by an alternative to personal service under rule 16.03 on an opposite party who has not responded to the original pleading, whether or not he or she has been noted in default.



**RESPONDING TO AN AMENDED PLEADING**

**26.05** (1) A party shall respond to an amended pleading within the time remaining for responding to the original pleading, or within ten days after service of the amended pleading, whichever is the longer period, unless the court orders otherwise.

(2) Where a party has responded to a pleading that is subsequently amended, the party shall be deemed to rely on his or her original pleading in answer to the amended pleading unless the party responds to it within the prescribed time.

**AMENDMENT AT TRIAL**

**26.06** Where a pleading is amended at the trial, and the amendment is made on the face of the record, an order need not be taken out and the pleading as amended need not be filed or served unless the court orders otherwise.

**RULE 27 COUNTERCLAIM****WHERE AVAILABLE*****Against the Plaintiff***

**27.01** (1) A defendant may assert, by way of counterclaim in the main action, any right or claim that he or she may have against the plaintiff.

***Against the Plaintiff and Another Person***

(2) A defendant who counterclaims against a plaintiff may join as a defendant to the counterclaim any other person, whether a party to the main action or not, who is a necessary or proper party to the counterclaim.

**STATEMENT OF DEFENCE AND COUNTERCLAIM**

**27.02** A counterclaim (Form 27A or 27B) shall be included in the same document as the statement of defence and the document shall be entitled a statement of defence and counterclaim.

**COUNTERCLAIM TO BE ISSUED WHERE DEFENDANT TO COUNTERCLAIM NOT ALREADY PARTY TO MAIN ACTION**

**27.03** Where a person who is not already a party to the main action is made a defendant to the counterclaim, the statement of defence and counterclaim,

- (a) shall be issued,
  - (i) within the time prescribed by rule 18.01 for delivery of the statement of defence in the main action or at any time before the defendant is noted in default, or
  - (ii) subsequently with leave of the court; and
- (b) shall contain a second title of proceeding showing who is the plaintiff by counterclaim and who are defendants to the counterclaim.

**TIME FOR DELIVERY OR SERVICE OF DEFENCE AND COUNTERCLAIM*****Where all Parties are Parties to Main Action***

**27.04** (1) Where a counterclaim is only against the plaintiff, or only against the plaintiff and another person who is already a party to the main action, the statement of defence and counterclaim shall be delivered within the time prescribed by rule 18.01 for the delivery of the statement of defence in the main action, or at any time before the defendant is noted in default.

***Where New Party is Brought in***

(2) Where a counterclaim is against the plaintiff and a defendant to the counterclaim who is not already a party to the main action, the statement of defence and counterclaim shall be served, after it has been issued, on the parties to the main action and, together with all the pleadings previously delivered in the main action, on a defendant to the counterclaim who is not already a party to the main action, and shall be filed with proof of service,

- (a) within thirty days after the statement of defence and counterclaim is issued or at any time before the defendant is noted in default, or
- (b) subsequently with leave of the court.

(3) A statement of defence and counterclaim need not be served personally on any person who is a party to the main action, except where a defendant to the counterclaim is also a defendant in the main action and has failed to deliver a notice of intent to defend or a statement of defence in the main action, in which case the defendant shall be served personally or by an alternative to personal service under rule 16.03 whether or not the defendant has been noted in default in the main action.

### **TIME FOR DELIVERY OF DEFENCE TO COUNTERCLAIM**

**27.05** (1) The plaintiff and any other defendant to a counterclaim who is already a party to the main action shall deliver a defence to counterclaim (Form 27C) within twenty days after service of the statement of defence and counterclaim.

(2) Where the plaintiff delivers a reply in the main action, the defence to counterclaim shall be included in the same document as the reply and the document shall be entitled a reply and defence to counterclaim.

(3) A defendant to a counterclaim who is not already a party to the main action shall deliver a defence to counterclaim,

- (a) within twenty days after service of the statement of defence and counterclaim, where the defendant to the counterclaim is served in Ontario;
- (b) within forty days after service of the statement of defence and counterclaim, where the defendant to the counterclaim is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the statement of defence and counterclaim, where the defendant to the counterclaim is served anywhere else,

except as provided in subrule 18.02(3) (notice of intent to defend) or 19.01(5) (late delivery of defence).

### **TIME FOR DELIVERY OF REPLY TO DEFENCE TO COUNTERCLAIM**

**27.06** A reply to defence to counterclaim (Form 27D), if any, shall be delivered within ten days after service of the defence to counterclaim.

### **AMENDING DEFENCE TO ADD COUNTERCLAIM**

**27.07** (1) A defendant who has delivered a statement of defence that does not contain a counterclaim and who wishes to counterclaim only against the plaintiff or only against the plaintiff and another person who is already a party to the main action may amend the statement of defence in accordance with rules 26.02 and 26.03 in order to add the counterclaim, and rule 26.05 (responding to amended pleading) applies to the amended statement of defence and counterclaim.

(2) A defendant who has delivered a statement of defence that does not contain a counterclaim and who wishes to counterclaim against the plaintiff and another person who is not already a party to the main action may, with leave of the court, have the registrar issue an amended statement of defence and counterclaim, and rule 26.05 (responding to amended pleading) applies to the amended statement of defence and counterclaim.

### **TRIAL OF COUNTERCLAIM**

**27.08** (1) A counterclaim shall be tried at the trial of the main action, unless the court orders otherwise.

(2) Where it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to a party, the court may order separate trials or order that the counterclaim proceed as a separate action.

### **DISPOSITION OF COUNTERCLAIM**

#### ***Where Claim in Main Action not Disputed***

**27.09** (1) Where a defendant does not dispute the claim of the plaintiff in the main action, but asserts a counterclaim, the court may stay the main action or grant judgment, with or without a stay of execution, until the counterclaim is disposed of.

#### ***Where Counterclaim not Disputed***

(2) Where the plaintiff does not dispute the counterclaim of a defendant, the court may stay the counterclaim or grant judgment, with or without a stay of execution, until the main action is disposed of.

#### ***Where Both Claim and Counterclaim Succeed***

(3) Where both the plaintiff in the main action and the plaintiff by counterclaim succeed, either in whole or in part, and there is a resulting balance in favour of one of them, the court may in a proper case give judgment for the balance and dismiss the smaller claim and may make such order for costs of the claim and counterclaim as is just.

### **APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS**

**27.10** Rules 27.01 to 27.09 apply, with necessary modifications, to the assertion of a counterclaim by a defendant to a counterclaim, by a defendant to a crossclaim and by a third party.



**RULE 28 CROSSCLAIM****WHERE AVAILABLE**

**28.01** (1) A defendant may crossclaim against a co-defendant who,

- (a) is or may be liable to the defendant for all or part of the plaintiff's claim;
- (b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,
  - (i) a transaction or occurrence or series of transactions or occurrences involved in the main action, or
  - (ii) a related transaction or occurrence or series of transactions or occurrences; or
- (c) should be bound by the determination of an issue arising between the plaintiff and the defendant.

(2) A defendant who claims contribution from a co-defendant under the Negligence Act shall do so by way of crossclaim.

**STATEMENT OF DEFENCE AND CROSSCLAIM**

**28.02** A crossclaim (Form 28A) shall be included in the same document as the statement of defence and the document shall be entitled a statement of defence and crossclaim.

**AMENDING DEFENCE TO ADD CROSSCLAIM**

**28.03** A defendant who has delivered a statement of defence that does not contain a crossclaim and who wishes to crossclaim may amend the statement of defence in accordance with rules 26.02 and 26.03 in order to add the crossclaim, and rule 26.05 (responding to amended pleading) applies to the amended statement of defence and crossclaim.

**TIME FOR DELIVERY OF STATEMENT OF DEFENCE AND CROSSCLAIM**

**28.04** (1) A statement of defence and crossclaim shall be delivered,

- (a) within the time prescribed by rule 18.01 for delivery of the statement of defence in the main action or at any time before the defendant is noted in default; or
- (b) subsequently with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.

(2) A statement of defence and crossclaim need not be served personally on a defendant against whom a crossclaim is made, unless the defendant has failed to deliver a notice of intent to defend or a statement of defence in the main action, in which case the defendant shall be served personally or by an alternative to personal service under rule 16.03, whether or not the defendant has been noted in default in the main action.

**TIME FOR DELIVERY OF DEFENCE TO CROSSCLAIM**

**28.05** A defence to crossclaim (Form 28B) shall be delivered within twenty days after service of the statement of defence and crossclaim.

**CONTENTS OF DEFENCE TO CROSSCLAIM*****May Defend Against Crossclaim and Against Plaintiff's Claim Against Co-defendant***

**28.06** (1) In a defence to crossclaim, the defendant may,

- (a) defend against the crossclaim; and
- (b) where appropriate, defend against the plaintiff's claim against the crossclaiming defendant, in which case the defendant may raise any defence open to the crossclaiming defendant.

***Separate Part for Defence Against Plaintiff***

(2) Where the defendant defends against the plaintiff's claim against the crossclaiming defendant, the defence to crossclaim shall contain a separate part entitled a defence to plaintiff's claim against crossclaiming defendant.

***Consequence of Defending Against Plaintiff***

(3) A defendant who defends against the plaintiff's claim against the crossclaiming defendant,

- (a) has the same rights and obligations in the action, including those in respect of discovery, trial and appeal, as a defendant to that claim; and
- (b) is bound by any order or determination made in the main action between the plaintiff and the crossclaiming defendant.

***Time for Reply by Plaintiff***

(4) The plaintiff's reply, if any, to the defence to plaintiff's claim against crossclaiming defendant shall be delivered within ten days after service of that defence.

***Consequence of Not Defending Against Plaintiff***

(5) A defendant who does not defend against the plaintiff's claim against the crossclaiming defendant is bound by any order or determination made in the main action between the plaintiff and the crossclaiming defendant.

**EFFECT OF DEFAULT OF DEFENCE TO CROSSCLAIM**

**28.07** Where a defendant against whom a crossclaim is made is noted in default in respect of the crossclaim, the crossclaiming defendant may obtain judgment against the other defendant only at the trial of the main action or on motion to a judge.

**TIME FOR DELIVERY OF REPLY TO DEFENCE TO CROSSCLAIM**

**28.08** A reply to defence to crossclaim (Form 28C), if any, shall be delivered within ten days after service of the defence to crossclaim.

**TRIAL OF CROSSCLAIM**

**28.09** A crossclaim shall be tried at or immediately after the trial of the main action, unless the court orders otherwise.

**PREJUDICE OR DELAY TO PLAINTIFF**

**28.10** A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a crossclaim, and on motion by the plaintiff the court may make such order or impose such terms, including an order that the crossclaim proceed as a separate action, as are neces-

sary to prevent prejudice or delay where that may be done without injustice to the parties to the crossclaim.

**APPLICATION TO COUNTERCLAIMS AND THIRD PARTY CLAIMS**

**28.11** Rules 28.01 to 28.10 apply, with necessary modifications, to the assertion of a crossclaim between co-defendants to a counterclaim or between third parties to a third party claim.

**RULE 29 THIRD PARTY CLAIM****WHERE AVAILABLE**

**29.01** A defendant may commence a third party claim against any person who is not a party to the action and who,

- (a) is or may be liable to the defendant for all or part of the plaintiff's claim;
- (b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,
  - (i) a transaction or occurrence or series of transactions or occurrences involved in the main action, or
  - (ii) a related transaction or occurrence or series of transactions or occurrences; or
- (c) should be bound by the determination of an issue arising between the plaintiff and the defendant.

**TIME FOR THIRD PARTY CLAIM***Issuing*

**29.02** (1) A third party claim (Form 29A) shall be issued,

- (a) within ten days after the time prescribed by rule 18.01 for delivery of the statement of defence in the main action or at any time before the defendant is noted in default; or
- (b) subsequently with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.

*Service*

(2) A third party claim shall be served on the third party personally or by an alternative to personal service under rule 16.03, together with all the pleadings previously delivered in the main action or in any counterclaim, crossclaim or third or subsequent party claim in the main action, within thirty days after the third party claim is issued.

(3) A third party claim shall also be served on every other party to the main action within the time for service on the third party, but personal service is not required.

**THIRD PARTY DEFENCE**

**29.03** A third party may defend against the third party claim by delivering a third party defence (Form 29B),

- (a) within twenty days after service of the third party claim, where the third party is served in Ontario;
- (b) within forty days after service of the third party claim, where the defendant is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the third party claim, where the third party is served anywhere else,

except as provided in subrule 18.02(3) (notice of intent to defend) or 19.01(5) (late filing of defence).



**REPLY TO THIRD PARTY DEFENCE**

**29.04** A reply to third party defence (Form 29C), if any, shall be delivered within ten days after service of the third party defence.

**DEFENCE OF MAIN ACTION BY THIRD PARTY*****Third Party May Defend Main Action***

**29.05** (1) Where appropriate, the third party may defend against the plaintiff's claim against the defendant by delivering a statement of defence in the main action, in which the third party may raise any defence open to the defendant.

***Consequence of Defending Main Action***

- (2) A third party who delivers a statement of defence in the main action,
- (a) has the same rights and obligations in the main action, including those in respect of discovery, trial and appeal, as a defendant in the main action; and
  - (b) is bound by any order or determination made in the main action between the plaintiff and the defendant who made the third party claim.

***Time for Statement of Defence***

(3) The statement of defence of the third party shall be delivered within the time prescribed by rule 29.03 for the delivery of his or her third party defence.

***Time for Reply***

(4) The plaintiff's reply, if any, to the statement of defence of the third party shall be delivered within ten days after service of that statement of defence.

***Consequence of Not Defending Main Action***

(5) A third party who does not deliver a statement of defence in the main action is bound by any order or determination made in the main action between the plaintiff and the defendant who made the third party claim.

**EFFECT OF THIRD PARTY DEFENCE**

**29.06** Where a third party has delivered a third party defence,

- (a) the third party shall be served with all subsequent documents in the main action;
- (b) judgment in the main action on consent or after the noting of the defendant in default may be obtained only on notice to the third party; and
- (c) where the defendant making the third party claim has also made a crossclaim against a co-defendant, the co-defendant and the third party have the same rights to discovery from each other as if they were parties to the same action.

**EFFECT OF DEFAULT OF THIRD PARTY**

**29.07** Where a third party has been noted in default, the defendant may obtain judgment against the third party only at the trial of the main action or on motion to a judge.

**TRIAL OF THIRD PARTY CLAIM**

**29.08** (1) After the close of pleadings in the third party claim it shall be listed for trial as an action as provided in Rule 48 without undue delay and placed on the trial list immediately after the main action.

(2) The third party claim shall be tried at or immediately after the trial of the main action, unless the court orders otherwise.

**PREJUDICE OR DELAY TO PLAINTIFF**

**29.09** A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a third party claim, and on motion by the plaintiff the court may make such order or impose such terms, including an order that the third party claim proceed as a separate action, as are necessary to prevent prejudice or delay where that may be done without injustice to the defendant or the third party.

**THIRD PARTY DIRECTIONS**

**29.10** Any party affected by a third party claim may move for directions in respect of any matter of procedure not otherwise provided for in these rules.

**FOURTH AND SUBSEQUENT PARTY CLAIMS**

**29.11** (1) A third party may, by commencing a fourth party claim, assert against any person not already a party to the third party claim any claim that is properly the subject matter of a third party claim, and rules 29.01 to 29.10 apply, with necessary modifications, to the fourth party claim.

(2) A fourth party claim need not be served personally on a fourth party who is a party to the main action, unless the fourth party is a defendant in that action and has failed to deliver a notice of intent to defend or a statement of defence in the main action, in which case the fourth party shall be served personally or by an alternative to personal service under rule 16.03, whether or not the fourth party has been noted in default in the main action.

(3) A fourth or subsequent party may assert any claim that is properly the subject matter of a third party claim in like manner as a third party claim.

**APPLICATION TO FOURTH AND SUBSEQUENT PARTY CLAIMS**

**29.12** The provisions of these rules that apply to third party claims apply, with necessary modifications, to fourth and subsequent party claims.

**APPLICATION TO COUNTERCLAIMS AND CROSSCLAIMS**

**29.13** Rules 29.01 to 29.12 apply, with necessary modifications, to the assertion of a third party claim by a defendant to a counterclaim or by a defendant to a crossclaim.

## DISCOVERY

### RULE 30 DISCOVERY OF DOCUMENTS

#### INTERPRETATION

**30.01** (1) In rules 30.02 to 30.11,

- (a) 'document' includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device; and
- (b) a document shall be deemed to be in a party's power if that party is entitled to obtain the original document or a copy of it and the party seeking it is not so entitled.

(2) In subrule 30.02(4),

- (a) a corporation is a subsidiary of another corporation where it is controlled directly or indirectly by the other corporation; and
- (b) a corporation is affiliated with another corporation where,
  - (i) one corporation is the subsidiary of the other,
  - (ii) both corporations are subsidiaries of the same corporation, or
  - (iii) both corporations are controlled directly or indirectly by the same person or persons.

#### SCOPE OF DOCUMENTARY DISCOVERY

##### *Disclosure*

**30.02** (1) Every document relating to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in rules 30.03 to 30.10, whether or not privilege is claimed in respect of the document.

##### *Production for Inspection*

(2) Every document relating to any matter in issue in an action that is in the possession, control or power of a party to the action shall be produced for inspection if requested, as provided in rules 30.03 to 30.10, unless privilege is claimed in respect of the document.

##### *Insurance Policy*

(3) A party shall disclose and, if requested, produce for inspection any insurance policy under which an insurer may be liable,

- (a) to satisfy all or part of a judgment in the action; or
- (b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment,

but no information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

##### *Subsidiary and Affiliated Corporations and Corporations Controlled by Party*

(4) The court may order a party to disclose all relevant documents in the possession, control or power of the party's subsidiary or affiliated corporation or of a corporation

controlled directly or indirectly by the party and to produce for inspection all such documents that are not privileged.

## **AFFIDAVIT OF DOCUMENTS**

### ***Party to Serve Affidavit***

**30.03** (1) A party to an action shall, within ten days after the close of pleadings, serve on every other party an affidavit of documents (Form 30A or 30B) disclosing to the full extent of the party's knowledge, information and belief all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power.

### ***Contents***

(2) The affidavit shall list and describe, in separate schedules, all documents relating to any matter in issue in the action,

- (a) that are in the party's possession, control or power and that the party does not object to producing;
- (b) that are or were in the party's possession, control or power and for which the party claims privilege, and the grounds for the claim; and
- (c) that were formerly in the party's possession, control or power, but are no longer in the party's possession, control or power, whether or not privilege is claimed for them, together with a statement of when and how the party lost possession or control or power over them and their present location.

(3) The affidavit shall also contain a statement that the party has never had in his or her possession, control or power any document relating to any matter in issue in the action other than those listed in the affidavit.

### ***Solicitor's Certificate***

(4) Where the party is represented by a solicitor, the solicitor shall certify on the affidavit that he or she has explained to the deponent the necessity of making full disclosure of all relevant documents.

## **INSPECTION OF DOCUMENTS**

### ***Request to Inspect***

**30.04** (1) A party who serves on another party a request to inspect documents (Form 30C) is entitled to inspect any document that is not privileged and that is referred to in the other party's affidavit of documents as being in his or her possession, control or power.

(2) A request to inspect documents may also be used to obtain the inspection of any document in another party's possession, control or power that is referred to in the originating process, pleadings or an affidavit served by the other party.

(3) A party on whom a request to inspect documents is served shall forthwith inform the party making the request of a date within five days after the service of the request to inspect documents and of a time between 9:30 a.m. and 4:30 p.m. when the documents may be inspected at the office of the solicitor of the party served, or at some other convenient place, and shall at the time and place named make the documents available for inspection.



***Documents to be Taken to Examination and Trial***

(4) All documents listed in a party's affidavit of documents that are not privileged and all documents previously produced for inspection by the party shall, without notice, summons or order, be taken to and produced at,

(a) the examination for discovery of the party or of a person on behalf or in place of or in addition to the party; and

(b) the trial of the action,

unless the parties agree otherwise.

***Court may Order Production***

(5) The court may at any time order production for inspection of documents that are not privileged and that are in the possession, control or power of a party.

***Court may Inspect to Determine Claim of Privilege***

(6) Where privilege is claimed for a document, the court may inspect the document to determine the validity of the claim.

***Copying of Documents***

(7) Where a document is produced for inspection, the party inspecting the document is entitled to make a copy of it at his or her own expense, if it can be reproduced, unless the person having possession or control of or power over the document agrees to make a copy, in which case the person shall be reimbursed for the cost of making the copy.

***Divided Disclosure or Production***

(8) Where a document may become relevant only after the determination of an issue in the action and disclosure or production for inspection of the document before the issue is determined would seriously prejudice a party, the court on the party's motion may grant leave to withhold disclosure or production until after the issue has been determined.

**DISCLOSURE OR PRODUCTION NOT ADMISSION OF RELEVANCE**

**30.05** The disclosure or production of a document for inspection shall not be taken as an admission of its relevance or admissibility.

**WHERE AFFIDAVIT INCOMPLETE OR PRIVILEGE IMPROPERLY CLAIMED**

**30.06** Where the court is satisfied by any evidence that a relevant document in a party's possession, control or power may have been omitted from the party's affidavit of documents, or that a claim of privilege may have been improperly made, the court may,

(a) order cross-examination on the affidavit of documents;

(b) order service of a further and better affidavit of documents;

(c) order the disclosure or production for inspection of the document, or a part of the document, if it is not privileged; and

(d) inspect the document for the purpose of determining its relevance or the validity of a claim of privilege.

**DOCUMENTS OR ERRORS SUBSEQUENTLY DISCOVERED**

**30.07** Where a party, after serving an affidavit of documents,

- (a) comes into possession or control of or obtains power over a document that relates to a matter in issue in the action and that is not privileged; or
- (b) discovers that the affidavit is inaccurate or incomplete,

the party shall forthwith serve a supplementary affidavit specifying the extent to which the affidavit of documents requires modification and disclosing any additional documents.

## **EFFECT OF FAILURE TO DISCLOSE OR PRODUCE FOR INSPECTION**

### ***Failure to Disclose or Produce Document***

**30.08** (1) Where a party fails to disclose a document in an affidavit of documents or a supplementary affidavit, or fails to produce a document for inspection in compliance with these rules or an order of the court,

- (a) if the document is favourable to his or her case, the party may not use the document at the trial, except with leave of the trial judge; or
- (b) if the document is not favourable to his or her case, the court may make such order as is just.

### ***Failure to Serve Affidavit or Produce Document***

(2) Where a party fails to serve an affidavit of documents or produce a document for inspection in compliance with these rules or fails to comply with an order of the court under rules 30.02 to 30.11, the court may,

- (a) revoke or suspend the party's right, if any, to initiate or continue an examination for discovery;
- (b) dismiss the action, if the party is a plaintiff, or strike out the statement of defence, if the party is a defendant; and
- (c) make such other order as is just.

## **PRIVILEGED DOCUMENT NOT TO BE USED WITHOUT LEAVE**

**30.09** Where a party has claimed privilege in respect of a document and does not abandon the claim by giving notice in writing and providing a copy of the document or producing it for inspection not later than ten days after the action is set down for trial, the party may not use the document at the trial, except to impeach the testimony of a witness or with leave of the trial judge.

## **PRODUCTION FROM NON-PARTIES WITH LEAVE**

### ***Order for Inspection***

**30.10** (1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

- (a) the document is relevant to a material issue in the action; and
- (b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

### ***Notice of Motion***

- (2) A motion for an order under subrule (1) shall be made on notice,
  - (a) to every other party; and

- (b) to the person not a party, served personally or by an alternative to personal service under rule 16.03.

***Court may Inspect Document***

(3) Where privilege is claimed for a document referred to in subrule (1), or where the court is uncertain of the relevance of or necessity for discovery of the document, the court may inspect the document to determine the issue.

***Preparation of Certified Copy***

(4) The court may give directions respecting the preparation of a certified copy of a document referred to in subrule (1) and the certified copy may be used for all purposes in place of the original.

**DOCUMENT DEPOSITED FOR SAFE KEEPING**

**30.11** The court may order that a relevant document be deposited for safe keeping with the registrar and thereafter the document shall not be inspected by any person except with leave of the court.

**RULE 31 EXAMINATION FOR DISCOVERY****DEFINITION**

**31.01** In rules 31.02 to 31.11, “document” has the same meaning as in clause 30.01(1)(a).

**FORM OF EXAMINATION**

**31.02** (1) Subject to subrule (2), an examination for discovery may take the form of an oral examination or, at the option of the examining party, an examination by written questions and answers, but the examining party is not entitled to subject a person to both forms of examination except with leave of the court.

(2) Where more than one party is entitled to examine a person, the examination for discovery shall take the form of an oral examination, unless all the parties entitled to examine the person agree otherwise.

**WHO MAY EXAMINE AND BE EXAMINED***Generally*

**31.03** (1) A party to an action may examine for discovery any other party adverse in interest once, and may examine that party more than once only with leave of the court, but a party may examine more than one person as permitted by subrules (3) to (8).

*On Behalf of Corporation*

(2) Where a corporation may be examined for discovery, the examining party may examine any officer, director or employee on behalf of the corporation, but the court on motion of the corporation before the examination may order the examining party to examine another officer, director or employee.

(3) Where an officer, director or employee of a corporation has been examined, no other officer, director or employee of the corporation may be examined without leave of the court.

*On Behalf of Partnership or Sole Proprietorship*

(4) Where an action is brought by or against a partnership or a sole proprietorship using the firm name, each person who was, or is alleged to have been, a partner or the sole proprietor, as the case may be, at a material time, may be examined on behalf of the partnership or sole proprietorship.

*In Place of Person under Disability*

(5) Where an action is brought by or against a party under disability,

- (a) the litigation guardian or committee may be examined in place of the person under disability; or
- (b) at the option of the examining party, the person under disability may be examined if he or she is competent to give evidence,

but where the litigation guardian or committee is the Official Guardian or the Public Trustee, the litigation guardian or committee may be examined only with leave of the court.

*Assignee*

(6) Where an action is brought by or against an assignee, the assignor may be examined in addition to the assignee.



***Trustee in Bankruptcy***

(7) Where an action is brought by or against a trustee of the estate of a bankrupt, the bankrupt may be examined in addition to the trustee.

***Nominal Party***

(8) Where an action is brought or defended for the immediate benefit of a person who is not a party, the person may be examined in addition to the party bringing or defending the action.

***Limiting Multiple Examinations***

(9) Where a party is entitled to examine for discovery,

- (a) more than one person under this rule; or
- (b) multiple parties who are in the same interest,

but the court is satisfied that multiple examinations would be oppressive, vexatious or unnecessary, the court may impose such limits on the right of discovery as are just.

**WHEN EXAMINATION MAY BE INITIATED*****Examination of Plaintiff***

**31.04** (1) A party who seeks to examine a plaintiff for discovery may serve a notice of examination under rule 34.04 or written questions under rule 35.01 only after delivering a statement of defence and, unless the parties agree otherwise, serving an affidavit of documents.

***Examination of Defendant***

(2) A party who seeks to examine a defendant for discovery may serve a notice of examination under rule 34.04 or written questions under rule 35.01 only after,

- (a) the defendant has delivered a statement of defence and, unless the parties agree otherwise, the examining party has served an affidavit of documents; or
- (b) the defendant has been noted in default.

**Completion of Examination**

(3) The party who first serves on another party a notice of examination under rule 34.04 or written questions under rule 35.01 may examine first and may complete the examination before being examined by another party, unless the court orders otherwise.

**ORAL EXAMINATION BY MORE THAN ONE PARTY**

**31.05** Where more than one party is entitled to examine a party or person for discovery without leave, there shall be only one oral examination, which may be initiated by any party adverse to the party,

- (a) who is to be examined; or
- (b) on behalf or in place of whom, or in addition to whom, a person is to be examined,

unless the court orders or the parties agree otherwise.

## SCOPE OF EXAMINATION

### *General*

**31.06** (1) A person examined for discovery shall answer, to the best of his or her knowledge, information and belief, any proper question relating to any matter in issue in the action or to any matter made discoverable by subrules (2) to (4) and no question may be objected to on the ground that,

- (a) the information sought is evidence;
- (b) the question constitutes cross-examination, unless the question is directed solely to the credibility of the witness; or
- (c) the question constitutes cross-examination on the affidavit of documents of the party being examined.

### *Identity of Persons Having Knowledge*

(2) A party may on an examination for discovery obtain disclosure of the names and addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue in the action, unless the court orders otherwise.

### *Expert Opinions*

(3) A party may on an examination for discovery obtain disclosure of the findings, opinions and conclusions of an expert engaged by or on behalf of the party being examined that relate to a matter in issue in the action and of the expert's name and address, but the party being examined need not disclose the information or the name and address of the expert where,

- (a) the findings, opinions and conclusions of the expert relating to any matter in issue in the action were made or formed in preparation for contemplated or pending litigation and for no other purpose; and
- (b) the party being examined undertakes not to call the expert as a witness at the trial.

### *Insurance Policies*

(4) A party may on an examination for discovery obtain disclosure of the existence and contents of any insurance policy under which an insurer may be liable,

- (a) to satisfy all or part of a judgment in the action; or
- (b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment,

but no information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

### *Divided Discovery*

(5) Where information may become relevant only after the determination of an issue in the action and the disclosure of the information before the issue is determined would seriously prejudice a party, the court on the party's motion may grant leave to withhold the information until after the issue has been determined.

## EFFECT OF REFUSAL

**31.07** (1) Where a party, or a person examined for discovery on behalf or in place of a party, has refused to answer a proper question or to answer a question on the ground of privilege, and has failed to furnish the information in writing not later than ten days

after the action is set down for trial, the party may not introduce at the trial the information refused on discovery, except with leave of the trial judge.

(2) The sanction provided by subrule (1) is in addition to the sanctions provided by rule 34.15 (sanctions for default in examination).

## **EFFECT OF COUNSEL ANSWERING**

**31.08** Questions on an oral examination for discovery shall be answered by the person being examined but, where there is no objection, the question may be answered by his or her counsel and the answer shall be deemed to be the answer of the person being examined unless, before the conclusion of the examination, the person repudiates, contradicts or qualifies the answer.

## **INFORMATION SUBSEQUENTLY OBTAINED**

### ***Duty to Correct Answers***

**31.09** (1) Where a party has been examined for discovery or a person has been examined for discovery on behalf or in place of, or in addition to the party, and the party subsequently discovers that the answer to a question on the examination,

- (a) was incorrect or incomplete when made; or
- (b) is no longer correct and complete,

the party shall forthwith provide the information in writing to every other party.

### ***Consequences of Correcting Answers***

- (2) Where a party provides information in writing under subrule (1),
  - (a) the writing may be treated at a hearing as if it formed part of the original examination of the person examined; and
  - (b) any adverse party may require that the information be verified by affidavit of the party or be the subject of further examination for discovery.

### ***Sanction for Failing to Correct Answers***

- (3) Where a party has failed to comply with subrule (1) or a requirement under clause (2)(b), and the information subsequently discovered is,
  - (a) favourable to his or her case, the party may not introduce the information at the trial, except with leave of the trial judge; or
  - (b) not favourable to his or her case, the court may make such order as is just.

## **DISCOVERY OF NON-PARTIES WITH LEAVE**

### ***General***

**31.10** (1) The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.

### ***Test for Granting Leave***

- (2) An order under subrule (1) shall not be made unless the court is satisfied that,



- (a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person he or she seeks to examine;
- (b) it would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and
- (c) the examination will not,
  - (i) unduly delay the commencement of the trial of the action,
  - (ii) entail unreasonable expense for other parties, or
  - (iii) result in unfairness to the person the moving party seeks to examine.

#### ***Costs Consequences For Examining Party***

(3) A party who examines a person orally under this rule shall serve every party who attended or was represented on the examination with the transcript free of charge, unless the court orders otherwise.

(4) The examining party is not entitled to recover the costs of the examination from another party unless the court expressly orders otherwise.

#### ***Limitation on Use at Trial***

(5) The evidence of a person examined under this rule may not be read into evidence at trial under subrule 31.11(1).

### **USE OF EXAMINATION FOR DISCOVERY AT TRIAL**

#### ***Reading in Examination of Party***

**31.11** (1) At the trial of an action, a party may read into evidence as part of his or her own case against an adverse party any part of the evidence given on the examination for discovery of,

- (a) the adverse party; or
- (b) a person examined for discovery on behalf or in place of, or in addition to the adverse party, unless the trial judge orders otherwise,

if the evidence is otherwise admissible, whether the party or person has already given evidence or not.

#### ***Impeachment***

(2) The evidence given on an examination for discovery may be used for the purpose of impeaching the testimony of the deponent as a witness in the same manner as any previous inconsistent statement by that witness.

#### ***Qualifying Answers***

(3) Where only part of the evidence given on an examination for discovery is read into or used in evidence, at the request of an adverse party the trial judge may direct the introduction of any other part of the evidence that qualifies or explains the part first introduced.

#### ***Rebuttal***

(4) A party who reads into evidence as part of his or her own case evidence given on an examination for discovery of an adverse party, or a person examined for discovery on behalf or in place of or in addition to an adverse party, may rebut that evidence by introducing any other admissible evidence.



***Party under Disability***

(5) The evidence given on the examination for discovery of a party under disability may be read into or used in evidence at the trial only with leave of the trial judge.

***Unavailability of Deponent***

(6) Where a person examined for discovery,

- (a) has died;
- (b) is unable to testify because of infirmity or illness;
- (c) for any other sufficient reason cannot be compelled to attend at the trial; or
- (d) refuses to take an oath or make an affirmation or to answer any proper question,

any party may, with leave of the trial judge, read into evidence all or part of the evidence given on the examination for discovery as the evidence of the person examined, to the extent that it would be admissible if the person were testifying in court.

(7) In deciding whether to grant leave under subrule (6), the trial judge shall consider,

- (a) the extent to which the person was cross-examined on the examination for discovery;
- (b) the importance of the evidence in the proceeding;
- (c) the general principle that evidence should be presented orally in court; and
- (d) any other relevant factor.

***Subsequent Action***

(8) Where an action has been discontinued or dismissed and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, the evidence given on an examination for discovery taken in the former action may be read into or used in evidence at the trial of the subsequent action as if it had been taken in the subsequent action.

**RULE 32 INSPECTION OF PROPERTY****ORDER FOR INSPECTION**

**32.01** (1) The court may make an order for the inspection of real or personal property where it appears to be necessary for the proper determination of an issue in a proceeding.

(2) For the purpose of the inspection, the court may,

- (a) authorize entry on or into and the taking of temporary possession of any property in the possession of a party or of a person not a party;
- (b) permit the measuring, surveying or photographing of the property in question, or of any particular object or operation on the property; and
- (c) permit the taking of samples, the making of observations or the conducting of tests or experiments.

(3) The order shall specify the time, place and manner of the inspection and may impose such other terms, including the payment of compensation, as are just.

(4) No order for inspection shall be made without notice to the person in possession of the property unless,

- (a) service of notice, or the delay necessary to serve notice, might entail serious consequences to the moving party; or
- (b) the court dispenses with service of notice for any other sufficient reason.

**RULE 33 MEDICAL EXAMINATION OF PARTIES****MOTION FOR MEDICAL EXAMINATION**

**33.01** A motion by an adverse party for an order under section 119 of the *Courts of Justice Act, 1984* for the physical or mental examination of a party whose physical or mental condition is in question in a proceeding shall be made on notice to every other party.

**ORDER FOR EXAMINATION***Contents of Order*

**33.02** (1) An order under section 119 of the *Courts of Justice Act, 1984* may specify the time, place and purpose of the examination and shall name the medical practitioner or practitioners by whom it is to be conducted.

*Further Examinations*

(2) The court may order a second examination or further examinations on such terms respecting costs and other matters as are just.

**DISPUTE AS TO SCOPE OF EXAMINATION**

**33.03** The court may on motion determine any dispute relating to the scope of an examination.

**PROVISION OF INFORMATION TO PARTY OBTAINING ORDER***Interpretation*

**33.04** (1) Subrule 30.01(1) (meaning of “document”, “power”) applies to subrule (2).

*Party to be Examined must Provide Information*

(2) The party to be examined shall, unless the court orders otherwise, provide to the party obtaining the order, at least seven days before the examination, a copy of,

- (a) any report made by a medical practitioner who has treated or examined the party to be examined in respect of the mental or physical condition in question, other than a practitioner whose report was made in preparation for contemplated or pending litigation and for no other purpose, and whom the party to be examined undertakes not to call as a witness at the hearing; and
- (b) any hospital record or other medical document relating to the mental or physical condition in question that is in the possession, control or power of the party.

**WHO MAY ATTEND ON EXAMINATION**

**33.05** No person other than the person being examined, the examining medical practitioner and such assistants as the practitioner requires for the purpose of the examination shall be present at the examination, unless the court orders otherwise.

## MEDICAL REPORTS

### *Preparation of Report*

**33.06** (1) After conducting an examination, the examining medical practitioner shall prepare a written report setting out his or her observations, the results of any tests made and his or her conclusions, diagnosis and prognosis and shall forthwith provide the report to the party who obtained the order.

### *Service of Report*

(2) The party who obtained the order shall forthwith serve the report on every other party.

## PENALTY FOR FAILURE TO COMPLY

**33.07** A party who fails to comply with section 119 of the *Courts of Justice Act, 1984* or an order made under that section or with rule 33.04 is liable, if a plaintiff or applicant, to have the proceeding dismissed or, if a defendant or respondent, to have the statement of defence or affidavit in response to the application struck out.

## EXAMINATION BY CONSENT

**33.08** Rules 33.01 to 33.07 apply to a physical or mental examination conducted on the consent in writing of the parties, except to the extent that they are waived by the consent.



## EXAMINATIONS OUT OF COURT

### RULE 34 PROCEDURE ON ORAL EXAMINATIONS

#### APPLICATION OF THE RULE

**34.01** Rules 34.02 to 34.19 apply to,

- (a) an oral examination for discovery under Rule 31;
- (b) the taking of evidence before trial under rule 36.01, subject to rule 36.02;
- (c) a cross-examination on an affidavit for use on a motion or application under rule 39.02;
- (d) the examination out of court of a witness before the hearing of a pending motion or application under rule 39.03; and
- (e) an examination in aid of execution under rule 60.18.

#### BEFORE WHOM TO BE HELD

**34.02** An oral examination to be held in Ontario shall be held,

- (a) in the office of, but not necessarily before, an official examiner under section 105 of the *Courts of Justice Act, 1984*; or
- (b) before any person agreed on by the parties,

at a time and place fixed by the official examiner or person agreed on.

#### PLACE OF EXAMINATION

**34.03** Where the person to be examined resides in Ontario, the examination shall take place in the county in which the person resides, unless the court orders or the person to be examined and all the parties agree otherwise.

#### HOW ATTENDANCE REQUIRED

##### *Party*

**34.04** (1) Where the person to be examined is a party to the proceeding, a notice of examination (Form 34A) shall be served,

- (a) on the party's solicitor of record; or
- (b) where the party acts in person, on the party, personally and not by an alternative to personal service.

##### *Person Examined on Behalf or in Place of Party*

(2) Where a person is to be examined for discovery or in aid of execution on behalf or in place of a party, a notice of examination shall be served,

- (a) on the party's solicitor of record; or
- (b) on the person to be examined, personally and not by an alternative to personal service.

##### *Deponent of Affidavit*

(3) Where a person is to be cross-examined on an affidavit, a notice of examination shall be served,

- (a) on the solicitor for the party who filed the affidavit; or
- (b) where the party who filed the affidavit acts in person, on the person to be cross-examined, personally and not by an alternative to personal service.

#### ***Others***

- (4) Where the person to be examined,
  - (a) is neither a party nor a person referred to in subrule (2) or (3); and
  - (b) resides in Ontario,

the person shall be served with a summons to witness (Form 34B), personally and not by an alternative to personal service.

#### ***Attendance Money***

(5) When a summons to witness is served on a witness, attendance money calculated in accordance with Tariff A shall be paid or tendered to the witness at the same time.

#### ***Summons may be Issued in Blank***

(6) On the request of a party or a solicitor and on payment of the prescribed fee, a registrar shall sign, seal and issue a blank summons to witness and the party or solicitor may complete the summons and insert the names of any number of witnesses.

#### ***Person Outside Ontario***

(7) Rule 53.05 (summons to a witness outside Ontario) applies to the securing of the attendance for examination of a person outside Ontario and the attendance money paid or tendered to the person shall be calculated in accordance with the *Interprovincial Subpoenas Act*.

#### ***Person in Custody***

(8) Rule 53.06 (compelling attendance of witness in custody) applies to the securing of the attendance for examination of a person in custody.

### **NOTICE OF TIME AND PLACE**

#### ***Person to be Examined***

**34.05** (1) Where the person to be examined resides in Ontario, he or she shall be given not less than two days notice of the time and place of the examination, unless the court orders otherwise.

#### ***Every Other Party***

(2) Every party to the proceeding other than the examining party shall be given not less than two days notice of the time and place of the examination.

### **EXAMINATIONS ON CONSENT**

**34.06** A person to be examined and all the parties may consent to the time and place of the examination and,

- (a) to the minimum notice period and the form of notice; or
- (b) to dispense with notice.

**WHERE PERSON TO BE EXAMINED RESIDES OUTSIDE ONTARIO*****Contents of Order for Examination***

**34.07** (1) Where the person to be examined resides outside Ontario, the court may determine,

- (a) whether the examination is to take place in or outside Ontario;
- (b) the time and place of the examination;
- (c) the minimum notice period;
- (d) the person before whom the examination is to be conducted;
- (e) the amount of attendance money to be paid to the person to be examined; and
- (f) any other matter respecting the holding of the examination.

***Commission and Letter of Request***

(2) Where the person is to be examined outside Ontario, the order under subrule (1) shall, if the moving party requests it, provide for the issuing of,

- (a) a commission (Form 34C) authorizing the taking of evidence before a named commissioner; and
- (b) a letter of request (Form 34D) directed to the judicial authorities of the jurisdiction in which the person is to be found, requesting the issuing of such process as is necessary to compel the person to attend and be examined before the commissioner,

and the order shall be in Form 34E.

(3) The commission and letter of request shall be prepared and issued by the registrar.

***Attendance Money***

(4) Where the person to be examined resides outside Ontario and is not a party or a person to be examined on behalf or in place of a party, the examining party shall pay or tender to the person to be examined the amount of attendance money fixed by the order under subrule (1).

***Duties of Commissioner***

(5) A commissioner shall, to the extent that it is possible to do so, conduct the examination in the form of oral questions and answers in accordance with these rules, the law of evidence of Ontario and the terms of the commission, unless some other form of examination is required by the order or the law of the place where the examination is conducted.

(6) As soon as the transcript of the examination is prepared the commissioner shall,

- (a) return the commission, together with the original transcript and exhibits, to the registrar who issued it;
- (b) keep a copy of the transcript and, where practicable, the exhibits; and
- (c) notify the parties who appeared at the examination that the transcript is complete and has been returned to the registrar who issued the commission.

***Examining Party to Serve Transcript***

(7) The registrar shall send the transcript to the solicitor for the examining party and the solicitor shall forthwith serve every other party with the transcript free of charge.

**PERSON TO BE EXAMINED TO BE SWORN**

**34.08** (1) Before being examined, the person to be examined shall take an oath or make an affirmation and, where the examination is conducted in Ontario, the oath or affirmation shall be administered by an official examiner or by a person authorized to administer oaths in Ontario.

(2) Where the examination is conducted outside Ontario, the oath or affirmation may be administered by the person before whom the examination is conducted, a person authorized to administer oaths in Ontario or a person authorized to take affidavits or administer oaths or affirmations in the jurisdiction where the examination is conducted.

**INTERPRETER**

**34.09** (1) Where the person to be examined does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the person is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions to and answers of the person being examined.

(2) Where an interpreter is required by subrule (1) for the examination of,

(a) a party or a person on behalf or in place of a party, the party shall provide the interpreter;

(b) any other person, the examining party shall provide the interpreter,

unless the interpretation is from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General.

**PRODUCTION OF DOCUMENTS ON EXAMINATION*****Interpretation***

**34.10** (1) Subrule 30.01(1) (meaning of “document”, “power”) applies to subrules (2), (3) and (4).

***Person to be Examined Must Bring Required Documents and Things***

(2) The person to be examined shall bring to the examination and produce for inspection,

(a) on an examination for discovery, all documents in his or her possession, control or power that are not privileged and that subrule 30.04(4) requires the person to bring; and

(b) on any examination, including an examination for discovery, all documents and things in his or her possession, control or power that are not privileged and that the notice of examination or summons to witness requires the person to bring.

***Notice or Summons May Require Documents and Things***

(3) The notice of examination or summons to witness may require the person to be examined to bring to the examination and produce for inspection,

(a) all documents and things relating to any matter in issue in the proceeding that are in his or her possession, control or power and are not privileged; or

(b) such documents or things described in clause (a) as are specified in the notice or summons,



unless the court orders otherwise.

### ***Duty to Produce Other Documents***

(4) Where a person admits, on an examination, that he or she has possession or control of or power over any other document that relates to a matter in issue in the proceeding and is not privileged, the person shall produce it for inspection by the examining party forthwith, if the person has the document at the examination, and if not, within two days thereafter, unless the court orders otherwise.

## **RE-EXAMINATION**

### ***On Examination for Discovery***

**34.11** (1) A person being examined for discovery may be re-examined by his or her own counsel and by any party adverse in interest to the examining party.

### ***On Cross-Examination on Affidavit or Examination in Aid of Execution***

(2) A person being cross-examined on an affidavit or examined in aid of execution may be re-examined by his or her own counsel.

### ***Timing and Form***

(3) The re-examination shall take place immediately after the examination or cross-examination and shall not take the form of a cross-examination.

### ***On Examination for Motion or Application***

(4) Re-examination of a witness examined,

(a) before the hearing of a motion or application, is governed by subrule 39.03(2); and

(b) at the hearing of a motion or application, is governed by subrule 39.03(3).

### ***On Examination Before Trial***

(5) Re-examination of a witness examined before trial under Rule 36 is governed by subrule 36.02(2).

## **OBJECTIONS AND RULINGS**

**34.12** (1) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.

(2) A question that is objected to may be answered with the objector's consent, and where the question is answered, a ruling shall be obtained from the court before the evidence is used at a hearing.

(3) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the court.

## **RULINGS BY OFFICIAL EXAMINER**

**34.13** An official examiner may make rulings in respect of the conduct of an examination, other than a ruling on the propriety of a question, but an examiner's ruling is subject to review on a motion to set aside or vary the ruling.

**IMPROPER CONDUCT OF EXAMINATION*****Adjournment to Seek Directions***

**34.14** (1) An examination may be adjourned by the person being examined or by a party present or represented at the examination, for the purpose of moving for directions with respect to the continuation of the examination or for an order terminating the examination or limiting its scope, where,

- (a) the right to examine is being abused by an excess of improper questions or interfered with by an excess of improper interruptions or objections;
- (b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined;
- (c) many of the answers to the questions are evasive, unresponsive or unduly lengthy; or
- (d) there has been a neglect or improper refusal to produce a relevant document on the examination.

***Sanctions for Improper Conduct or Adjournment***

(2) Where the court finds that,

- (a) a person's improper conduct necessitated a motion under subrule (1); or
- (b) a person improperly adjourned an examination under subrule (1),

the court may order the person to pay personally and forthwith the costs of the motion, any costs thrown away and the costs of any continuation of the examination and the court may fix the costs and make such other order as is just.

**SANCTIONS FOR DEFAULT OR MISCONDUCT BY PERSON TO BE EXAMINED**

**34.15** (1) Where a person fails to attend at the time and place fixed for an examination in the notice of examination or summons to witness or at the time and place agreed on by the parties, or refuses to take an oath or make an affirmation, to answer any proper question, to produce a document or thing that he or she is required to produce or to comply with an order under rule 34.14, the court may,

- (a) where an objection to a question is held to be improper, order or permit the person being examined to reattend at his or her own expense and answer the question, in which case the person shall also answer any proper questions arising from the answer;
- (b) where the person is a party or, on an examination for discovery, a person examined on behalf or in place of a party, dismiss the party's proceeding or strike out the party's defence;
- (c) strike out all or part of the person's evidence, including any affidavit made by the person; and
- (d) make such other order as is just.

(2) Where a person does not comply with an order under rule 34.14 or subrule (1), a judge may make a contempt order against the person.

**EXAMINATION TO BE RECORDED**

**34.16** Every examination shall be recorded in its entirety in question and answer form in a manner that permits the preparation of a typewritten transcript of the examination, unless the court orders or the parties agree otherwise.

**TYPEWRITTEN TRANSCRIPT**

**34.17** (1) Where a party so requests, the official examiner or person who recorded an examination shall have a typewritten transcript of the examination prepared and completed within four weeks after receipt of the request.

(2) The transcript shall be certified as correct by the person who recorded the examination, but need not be read to or signed by the person examined.

(3) As soon as the transcript is prepared the official examiner or person who recorded the examination shall send one copy to each party who has ordered and paid for a transcript and, if a party so requests and pays for it, shall provide an additional copy for the use of the court.

**FILING OF TRANSCRIPT*****Party to Have Transcript Available***

**34.18** (1) It is the responsibility of a party who intends to refer to evidence given on an examination to have a copy of the transcript of the examination available for filing with the court.

***Filing for Use on Motion or Application***

(2) Where a party intends to refer to a transcript on the hearing of a motion or application, a copy of the transcript for the use of the court shall be filed in the court office where the motion or application is to be heard, not later than 2 p.m. on the day before the hearing.

***Filing for Use at Trial***

(3) Where a party intends to refer to a transcript at a trial, a copy of the transcript for the use of the court need only be filed at the trial and then only when a party refers to it.

(4) The transcript of an examination in an action shall not be given to or read by the trial judge until a party refers to it at the trial, and the trial judge may read only those portions referred to by a party.

**VIDEOTAPING OR OTHER RECORDING OF EXAMINATION**

**34.19** (1) On consent of the parties or by order of the court, an examination may be recorded by videotape or other similar means and the tape or other recording may be filed for the use of the court along with the transcript.

(2) Rule 34.18 applies, with necessary modifications, to a tape or other recording made under subrule (1).

## **RULE 35 PROCEDURE ON EXAMINATION FOR DISCOVERY BY WRITTEN QUESTIONS**

### **QUESTIONS**

**35.01** An examination for discovery by written questions and answers shall be conducted by serving a list of the questions to be answered (Form 35A) on the person to be examined and every other party.

### **ANSWERS**

**35.02** (1) Written questions shall be answered by the affidavit (Form 35B) of the person being examined, served on the examining party within fifteen days after service of the list of questions.

(2) The examining party shall serve the answers on every other party forthwith.

### **OBJECTIONS**

**35.03** An objection to answering a written question shall be made in the affidavit of the person being examined, with a brief statement of the reason for the objection.

### **FAILURE TO ANSWER**

#### ***Further List of Questions***

**35.04** (1) Where the examining party is not satisfied with an answer or where an answer suggests a new line of questioning, the examining party may, within ten days after receiving the answer, serve a further list of written questions which shall be answered within fifteen days after service.

#### ***Court Order for Further Answers***

(2) Where the person being examined refuses or fails to answer a proper question or where the answer to a question is insufficient, the court may order the person to answer or give a further answer to the question or to answer any other question either by affidavit or on oral examination.

#### ***Court Order for Oral Examination***

(3) Where the court is satisfied, on reading all the answers to the written questions, that some or all of them are evasive, unresponsive or otherwise unsatisfactory, the court may order the person examined to submit to oral examination on such terms respecting costs and other matters as are just.

#### ***Additional Sanctions***

(4) Where a person refuses or fails to answer a proper question on a written examination or to produce a document that he or she is required to produce, the court may, in addition to imposing the sanctions provided in subrules (2) and (3),

- (a) if the person is a party or a person examined on behalf or in place of a party, dismiss the party's action or strike out the party's defence;
- (b) strike out all or part of the person's evidence; and
- (c) make such other order as is just.



**IMPROPER CONDUCT OF EXAMINATION**

**35.05** On motion by the person being examined, or by any party, the court may terminate the written examination or limit its scope where,

- (a) the right to examine is being abused by an excess of improper questions; or
- (b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined.

**FILING QUESTIONS AND ANSWERS**

**35.06** Rule 34.18 applies, with necessary modifications, to the filing of written questions and answers for the use of the court.

**RULE 36 TAKING EVIDENCE BEFORE TRIAL****WHERE AVAILABLE*****By Consent or by Order***

**36.01** (1) A party who intends to introduce the evidence of a person at trial may, with leave of the court or the consent of the parties, examine the person on oath or affirmation before trial for the purpose of having the person's testimony available to be tendered as evidence at the trial.

***Discretion of Court***

(2) In exercising its discretion to order an examination under subrule (1), the court shall take into account,

- (a) the convenience of the person whom the party seeks to examine;
- (b) the possibility that the person will be unavailable to testify at the trial by reason of death, infirmity or sickness;
- (c) the possibility that the person will be beyond the jurisdiction of the court at the time of the trial;
- (d) the expense of bringing the person to the trial;
- (e) whether the witness ought to give evidence in person at the trial; and
- (f) any other relevant consideration.

***Expert Witness***

(3) Before moving for leave to examine an expert witness under subrule (1), the moving party shall serve on every other party the report of the expert witness referred to in subrule 53.03(1) (calling expert witness at trial) unless the court orders otherwise.

**PROCEDURE**

**36.02** (1) Subject to subrule (2), Rule 34 applies to the examination of a witness under rule 36.01, unless the court orders otherwise.

(2) A witness examined under rule 36.01 may be examined, cross-examined and re-examined in the same manner as a witness at trial.

**EXAMINATIONS OUTSIDE ONTARIO**

**36.03** Where an order is made under rule 36.01 for the examination of a witness outside Ontario, the order shall, if the moving party requests it, provide for the issuing of a commission and letter of request under subrules 34.07(2) and (3) for the taking of the evidence of the witness and, on consent of the parties, any other witness in the same jurisdiction, and the order shall be in Form 34E.

**USE AT TRIAL**

**36.04** (1) Any party may use at the trial the transcript and a videotape or other recording of an examination under rule 36.01 or 36.03 as the evidence of the witness, unless the court orders otherwise on the ground that the witness ought to give evidence at the trial or for any other sufficient reason.

(2) A witness whose evidence has been taken under rule 36.01 or 36.03 shall not be called to give evidence at the trial, except with leave of the trial judge.

- (3) Use of evidence taken under rule 36.01 or 36.03 is subject to any ruling by the trial judge respecting its admissibility.
- (4) The transcript and a videotape or other recording may be filed with the court at the trial and need not be read or played at the trial unless a party or the trial judge requires it.

## MOTIONS AND APPLICATIONS

### RULE 37 MOTIONS—JURISDICTION AND PROCEDURE

#### NOTICE OF MOTION

**37.01** A motion shall be made by a notice of motion (Form 37A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

#### JURISDICTION TO HEAR A MOTION

##### *Jurisdiction of a Judge*

**37.02** (1) A judge of the court in which a proceeding is pending has jurisdiction to hear any motion in the proceeding.

##### *Jurisdiction of a Local Judge*

(2) A local judge has jurisdiction to hear any motion in a proceeding in the Supreme Court and has all the jurisdiction of a High Court judge in respect of a motion, except a motion,

- (a) to set aside, vary or amend an order of a High Court judge;
- (b) to confirm or to oppose confirmation of the report on a reference directed by a High Court judge;
- (c) for leave to appeal from an order of a High Court judge;
- (d) under section 4, 5, 6 or 8 of the *Judicial Review Procedure Act*;
- (e) under any Act to transfer a proceeding to the Supreme Court from any other court; or
- (f) for an order that a divorce action be tried by a High Court judge instead of a local judge.

##### *Jurisdiction of a Master*

(3) A master has jurisdiction to hear any motion in a proceeding in the Supreme Court, and has all the jurisdiction of a High Court judge in respect of a motion, except a motion,

- (a) where the power to grant the relief sought is conferred expressly on a judge by a statute or rule;
- (b) to set aside, vary or amend an order of a High Court judge or local judge;
- (c) to abridge or extend a time prescribed by an order that a master could not have made;
- (d) for judgment on consent in favour of or against a party under disability;
- (e) relating to the liberty of the subject;
- (f) under section 4 or 5 of the *Judicial Review Procedure Act*; or
- (g) in an appeal.



**PLACE OF HEARING*****Motion Made Without Notice***

**37.03** (1) A motion properly made without notice may be made in the county in which,

- (a) the proceeding was commenced;
- (b) any party resides; or
- (c) the solicitor of record for any party practises law.

***Motion Made on Notice — Generally***

(2) Unless the parties agree otherwise, and subject to subrules (3) to (5), a motion made on notice shall be made,

- (a) in the county where the solicitor of record for any responding party practises law or where a responding party who acts in person resides; or
- (b) where there is no responding party residing in Ontario or represented by a solicitor of record in Ontario, in the county where the proceeding was commenced or where the solicitor of record for any party practises law.

(3) Where a party has served a notice of motion naming a place of hearing in accordance with subrule (2), any other party may make a motion at the same place and time to the same judge or master, if the motion is within his or her jurisdiction.

(4) A motion that is within the exclusive jurisdiction of a High Court judge may be made in any county or district in which a High Court judge is available to hear motions.

***Leave to Hear Motion on Notice at Another Place***

(5) On the ground of urgency or hardship or for another sufficient reason, the court may grant leave for the hearing of a motion on notice at a place elsewhere than provided in subrule (2), and the motion for leave may be made in any county.

(6) Where leave is refused on a motion under subrule (5), the court shall fix the costs of any responding party who appeared at the hearing of the motion on a solicitor and client basis, together with travelling expenses, and order the moving party or his or her solicitor to pay those costs and expenses forthwith, unless the court is satisfied that the making of the motion for leave, although unsuccessful, was nevertheless reasonable.

**SUPREME COURT MOTIONS—TO WHOM TO BE MADE*****In Judicial District of York***

**37.04** (1) Where a motion in a proceeding in the Supreme Court is properly made in the Judicial District of York, it shall be made to,

- (a) a master, if the motion is within a master's jurisdiction;
- (b) a local judge, where the motion is made under clause 70.18(2)(b) (transfer of trial of divorce action) or 70.22(3)(b) or (c) (confirmation of report of family law commissioner) or at the trial of a divorce action before a local judge; or
- (c) a High Court judge, in any other case.

***Outside Judicial District of York***

(2) Where a motion in a proceeding in the Supreme Court is properly made outside the Judicial District of York, it shall be made to,

- (a) a master or local judge sitting in the county where the motion is made, if the motion is within a master's jurisdiction;
- (b) a local judge or a High Court judge sitting in that county, if the motion is within the jurisdiction of a local judge and not within the jurisdiction of a master; or
- (c) a High Court judge, in any other case.

## HEARING DATE IN SUPREME COURT MOTIONS COURTS

**37.05** (1) Where a Supreme Court motion is to be heard by a High Court judge at Toronto, Ottawa or London, a hearing date shall be obtained from the registrar before the notice of motion is served.

(2) Where the motion is urgent and a satisfactory date cannot be obtained from the registrar, the moving party may bring the motion on for hearing on any day that a High Court judge is sitting at Toronto, Ottawa or London for the hearing of motions.

## CONTENT OF NOTICE

**37.06** Every notice of motion (Form 37A) shall,

- (a) state the precise relief sought;
- (b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and
- (c) list the documentary evidence to be used at the hearing of the motion.

## SERVICE OF NOTICE

### *Required as General Rule*

**37.07** (1) The notice of motion shall be served on any person or party who will be affected by the order sought, unless these rules provide otherwise.

### *Where Not Required*

(2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice.

(3) Where the delay necessary to effect service might entail serious consequences, the court may make an interim order without notice.

(4) Where an order is made without notice to a person or party affected by the order, the order shall be served on the person or party unless the court orders or these rules provide otherwise.

### *Where Notice Ought to Have Been Served*

(5) Where it appears to the court that the notice of motion ought to have been served on a person who has not been served, the court may,

- (a) dismiss the motion or dismiss it only against the person who was not served;
- (b) adjourn the motion and direct that the notice of motion be served on the person; or
- (c) direct that any order made on the motion be served on the person.

***Minimum Notice Period***

(6) Where a motion is made on notice, the notice of motion shall be served at least three days before the date on which the motion is to be heard.

**FILING OF NOTICE OF MOTION**

**37.08** (1) Where a motion is made on notice, the notice of motion shall be filed with proof of service at least two days before the hearing date in the court office where the motion is to be heard.

(2) Where service of the notice of motion is not required, it shall be filed at or before the hearing.

**ABANDONED MOTIONS**

**37.09** (1) A party who makes a motion may abandon it by delivering a notice of abandonment.

(2) A party who serves a notice of motion and does not file it or appear at the hearing shall be deemed to have abandoned the motion unless the court orders otherwise.

(3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the court orders otherwise.

**MATERIAL FOR USE ON MOTIONS*****Where Motion Record Required***

**37.10** (1) Where a motion referred to in subrule (2) is made on notice, the moving party shall, unless the court orders otherwise before or at the hearing of the motion, serve a motion record on every other party to the motion and file it, with proof of service, in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing, and the court file shall not be placed before the judge or master hearing the motion unless he or she requests it or a party requisitions it.

(2) Subrule (1) applies to a motion that is,

- (a) made in the Supreme Court;
- (b) made in the District Court and to be heard in a county other than where the proceeding was commenced; or
- (c) to be heard by means of a conference telephone call under rule 37.12.

(3) The motion record shall contain, in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the notice of motion;
- (c) a copy of all affidavits and other material served by any party for use on the motion;
- (d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
- (e) a copy of any other material in the court file that is necessary for the hearing of the motion.



***Responding Party's Motion Record***

(4) Where a motion record is served, the responding party may serve on every other party, and file, with proof of service, in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing, a responding party's motion record containing,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and
- (b) a copy of any material to be used by the responding party on the motion and not included in the motion record.

***Material may be Filed as Part of Record***

(5) A notice of motion and any other material served by a party for use on a motion may be filed together with proof of service, as part of the party's motion record and need not be filed separately, but where the notice of motion is filed only as part of the motion record, the record shall be filed at least two days before the hearing date.

***Transcript of Evidence***

(6) A party who intends to refer to a transcript of evidence at the hearing of a motion shall file a copy of the transcript as provided by rule 34.18.

***Factum***

(7) A party may serve on every other party and file, with proof of service, in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing, a factum consisting of a concise statement, without argument, of the facts and law relied on by the party.

**HEARING IN ABSENCE OF PUBLIC**

**37.11** (1) A motion may be heard in the absence of the public where,

- (a) the order sought is unopposed or on consent;
- (b) because of urgency, it is impractical to have the motion heard in public;
- (c) the motion is to be heard by conference telephone under rule 37.12;
- (d) the motion is made in the course of a pre-trial conference; or
- (e) the motion is before a single judge of an appellate court.

(2) The hearing of all other motions shall be open to the public, except as provided in section 145 of the *Courts of Justice Act, 1984*, in which case the presiding judge or officer shall endorse on the notice of motion leave for a hearing in the absence of the public.

**HEARING BY CONFERENCE TELEPHONE**

**37.12** Where all counsel on a contested motion and the judge or officer before whom the motion is to be heard consent, the motion may be heard by means of a conference telephone call.

**DISPOSITION OF MOTION**

**37.13** (1) On the hearing of a motion, the presiding judge or officer may grant the relief sought or dismiss or adjourn the motion, in whole or in part and with or without terms, and may,



- (a) where the proceeding is an action, order that it be placed forthwith, or within a specified time, on a list of cases requiring speedy trial; or
- (b) where the proceeding is an application, order that it be heard at such time and place as are just.

(2) A judge who hears a motion may,

- (a) in a proper case, order that the motion be converted into a motion for judgment; or
- (b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge.

(3) Where on a motion a judge directs the trial of an issue, subrules 38.11(2) and (3) (issue treated as action) apply with necessary modifications.

## **SETTING ASIDE, VARYING OR AMENDING ORDERS**

### ***Motion to Set Aside or Vary***

**37.14** (1) A person who,

- (a) is affected by an order obtained on motion without notice;
- (b) fails to appear on a motion through accident, mistake or insufficient notice; or
- (c) is affected by an order of a registrar,

may move to set aside or vary the order, by a notice of motion that is served forthwith after the order comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion.

(2) On a motion under subrule (1), the court may set aside or vary the order on such terms as are just.

### ***Order Made by Registrar***

(3) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a registrar may be made to a judge or master, at a place in accordance with rule 37.03 (place of hearing of motions).

### ***Order Made by Judge or Master in High Court or by District Court Judge***

(4) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a judge, local judge or master in a proceeding in the High Court or District Court may be made,

- (a) to the judge or master who made it, at any place; or
- (b) where the order was made by,
  - (i) a High Court judge, to any other High Court judge,
  - (ii) a local judge, to any other local judge or a High Court judge,
  - (iii) a District Court judge, to any other District Court judge, or
  - (iv) a master, to any other master or a local judge,

at a place in accordance with rule 37.03 (place of hearing of motions).

### ***Order Made in Court of Appeal or Divisional Court***

(5) A motion under subrule (1) or any other rule to set aside, vary or amend an order made by a judge or panel of the Court of Appeal or Divisional Court may be made,

- (a) where the order was made by a judge, to the judge who made it or any other judge of the court; or
- (b) where the order was made by a panel of the court, to the panel that made it or any other panel of the court.

### **MOTIONS IN A COMPLICATED PROCEEDING OR SERIES OF PROCEEDINGS**

**37.15** (1) Where a proceeding involves complicated issues or where there are two or more proceedings in a court that involve similar issues, the Chief Justice of the High Court or the Chief Judge of the District Court, as the case may be, or a judge designated by him or her, may direct that all motions in the proceeding or proceedings be heard by a particular judge and rule 37.03 (place of hearing of motions) does not apply to those motions.

(2) A judge who hears motions pursuant to a direction under subrule (1) shall not preside at the trial of the actions or the hearing of the applications.

### **PROHIBITING MOTIONS WITHOUT LEAVE**

**37.16** On motion by any party, a judge or master may by order prohibit another party from making further motions in the proceeding without leave, where the judge or master on the hearing of the motion is satisfied that the other party is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the court by a multiplicity of frivolous or vexatious motions.

### **MOTION BEFORE COMMENCEMENT OF PROCEEDING**

**37.17** In an urgent case, a motion may be made before the commencement of a proceeding on the moving party's undertaking to commence the proceeding forthwith.

**RULE 38 APPLICATIONS—JURISDICTION AND PROCEDURE****APPLICATION OF THE RULE**

**38.01** (1) Rules 38.02 to 38.12 apply to all proceedings commenced by a notice of application under rule 14.05, subject to subrule (2).

(2) Rules 38.02 to 38.04 and rule 38.10 do not apply to applications to the Divisional Court for judicial review.

**JURISDICTION IN SUPREME COURT APPLICATIONS**

**38.02** Where the Supreme Court or a High Court judge has jurisdiction in respect of an application, a local judge has jurisdiction to hear the application and has all the jurisdiction of a High Court judge in respect of the application, except where,

- (a) the application is for judicial review or a prerogative remedy; or
- (b) the application has been removed from the District Court in accordance with a statute.

**SUPREME COURT APPLICATIONS—TO WHOM TO BE MADE*****Judge or Local Judge***

**38.03** (1) An application in the High Court may be made to a judge or, subject to rule 38.02, to a local judge of the High Court and the notice of application shall state whether the application is made to a judge or local judge.

***Transfer to a Judge***

(2) Where an application is made to a local judge, a respondent who has delivered a notice of appearance under rule 38.08 and who wishes to have the application heard by a High Court judge may, within five days after service of the notice of application, obtain on requisition from the registrar and serve on the applicant an order of transfer (Form 38A) transferring the application to a High Court judge.

(3) Where the applicant is served with an order of transfer, the applicant may proceed with the application only by delivering a notice of transfer (Form 38B) bringing the application before a High Court judge for hearing at a place named in the notice of transfer and on a hearing date to be obtained from the registrar in the county where the application is to be heard.

**PLACE AND DATE OF HEARING*****Place***

**38.04** (1) The applicant shall name in the notice of application as the place of hearing a place in which the court normally sits in the county in which the applicant proposes that the application be heard.

***Date for Hearing by High Court Judge***

(2) In an application in the Supreme Court to be heard by a High Court judge, a hearing date shall be obtained from the registrar in the county where the application is to be heard before the notice of application is issued.

(3) Where the application is urgent and a satisfactory date cannot be obtained from the registrar, the application may be brought on for hearing on any day that a High

Court judge is sitting for the hearing of applications in the county where the applicant proposes the application be heard.

### CONTENT OF NOTICE

**38.05** Every notice of application (Form 14E) shall state,

- (a) the precise relief sought;
- (b) the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and
- (c) the documentary evidence to be used at the hearing of the application.

### ISSUING OF NOTICE

**38.06** A notice of application shall be issued as provided by rule 14.07 before it is served.

### SERVICE OF NOTICE

#### *Generally*

**38.07** (1) The notice of application shall be served on all parties and, where there is uncertainty whether anyone else should be served, the applicant may make a motion without notice to a judge for an order for directions.

#### *Where Notice Ought to Have Been Served*

(2) Where it appears to the judge hearing the application that the notice of application ought to have been served on a person who has not been served, the judge may,

- (a) dismiss the application or dismiss it only against the person who was not served;
- (b) adjourn the application and direct that the notice of application be served on the person; or
- (c) direct that any judgment made on the application be served on the person.

#### *Minimum Notice Period*

(3) The notice of application shall be served at least ten days before the date of the hearing of the application, except where the notice is served outside Ontario, in which case it shall be served at least twenty days before the hearing date.

#### *Filing Proof of Service*

(4) The notice of application shall be filed with proof of service at least three days before the hearing date in the court office where the application is to be heard.

### NOTICE OF APPEARANCE

**38.08** (1) A respondent who has been served with a notice of application shall forthwith deliver a notice of appearance (Form 38C).

(2) A respondent who has not delivered a notice of appearance is not entitled to file material, examine a witness or cross-examine on an affidavit on the application and is not entitled to be heard at the hearing except with leave of the presiding judge.

(3) Subrule (2) does not apply to a motion to set aside service of a notice of application outside Ontario.



**ABANDONED APPLICATIONS**

**38.09** (1) The applicant may abandon an application by delivering a notice of abandonment.

(2) An applicant who fails to appear at the hearing shall be deemed to have abandoned the application unless the court orders otherwise.

(3) Where an application is abandoned or is deemed to have been abandoned, a respondent on whom the notice of application was served is entitled to the costs of the application, unless the court orders otherwise.

**MATERIAL FOR USE ON APPLICATIONS*****Application Record and Factum***

**38.10** (1) The applicant shall serve on every other party not later than three days before the hearing and file, with proof of service, in the court office where the application is to be heard, not later than 2 p.m. on the day before the hearing, an application record containing, in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the notice of application;
- (c) a copy of all affidavits and other material served by any party for use on the application;
- (d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
- (e) a copy of any other material in the court file that is necessary for the hearing of the application,

and a factum consisting of a concise statement, without argument, of the facts and law relied on by the applicant.

***Respondent's Application Record and Factum***

(2) The respondent shall serve on every other party and file, with proof of service, in the court office where the application is to be heard, not later than 2 p.m. on the day before the hearing, a respondent's application record containing, in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and in the case of an exhibit, by exhibit number or letter; and
- (b) a copy of any material to be used by the respondent on the application and not included in the application record,

and a factum consisting of a concise statement, without argument, of the facts and law relied on by the respondent.

***Dispensing with Record and Factum***

(3) A judge, before or at the hearing of the application, may dispense with compliance with this rule in whole or in part.

***Material May be Filed as Part of Record***

(4) Any material served by a party for use on an application may be filed, together with proof of service, as part of the party's application record and need not be filed separately if the record is filed within the time prescribed for filing the notice or other material.

***Transcript of Evidence***

(5) A party who intends to refer to a transcript of evidence at the hearing of an application shall file a copy of the transcript as provided by rule 34.18.

**DISPOSITION OF APPLICATION**

**38.11** (1) On the hearing of an application the presiding judge may,

- (a) grant the relief sought or dismiss or adjourn the application, in whole or in part and with or without terms; or
- (b) order that the whole application or any issue proceed to trial and give such directions as are just.

(2) Where a trial of the whole application is directed, the proceeding shall thereafter be treated as an action, subject to the directions in the order directing the trial.

(3) Where a trial of an issue in the application is directed, the order directing the trial may provide that the proceeding be treated as an action in respect of the issue to be tried, subject to any directions in the order, and shall provide that the application be adjourned to be disposed of by the trial judge.

**SETTING ASIDE JUDGMENT ON APPLICATION MADE WITHOUT NOTICE**

**38.12** (1) A person who is affected by a judgment on an application made without notice or who fails to appear at the hearing of an application through accident, mistake or insufficient notice may move to set aside or vary the judgment, by a notice of motion that is served forthwith after the judgment comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion.

(2) A motion under subrule (1) may be made,

- (a) to the judge or local judge who granted the judgment, at any place;
- (b) to any other judge or local judge who had jurisdiction to grant the judgment, at a place in accordance with rule 37.03 (place of hearing of motion); or
- (c) in the case of a judgment of the Divisional Court, to that court.

(3) On a motion under subrule (1), the judgment may be set aside or varied on such terms as are just.

**RULE 39 EVIDENCE ON MOTIONS AND APPLICATIONS****EVIDENCE BY AFFIDAVIT***Generally*

**39.01** (1) Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise.

*Service and Filing*

(2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard not later than 2 p.m. on the day before the hearing.

(3) All affidavits to be used at the hearing in opposition to a motion or application or in reply shall be served and filed with proof of service in the court office where the motion or application is to be heard not later than 2 p.m. on the day before the hearing.

*Contents – Motions*

(4) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

*Contents – Applications*

(5) An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

*Full and Fair Disclosure on Motion or Application Without Notice*

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application.

**EVIDENCE BY CROSS-EXAMINATION ON AFFIDAVIT***On a Motion or Application*

**39.02** (1) Where a party to a motion or application has served every affidavit on which the party intends to rely, he or she may cross-examine the deponent of any affidavit served by a party who is adverse in interest on the motion or application.

(2) A party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver any affidavit for use at the hearing without leave or consent, and the court shall grant leave, on such terms as are just, where it is satisfied that the party ought to be permitted to respond by affidavit to any matter raised on the cross-examination.

*To be Exercised with Reasonable Diligence*

(3) The right to cross-examine shall be exercised with reasonable diligence, and the court may refuse an adjournment of a motion or application for the purpose of cross-examination where the party seeking the adjournment has failed to act with reasonable diligence.

***Additional Provisions Applicable to Motions***

- (4) On a motion other than a motion for summary judgment or a contempt order, a party who cross-examines on an affidavit,
- (a) shall, where the party orders a transcript of the examination, purchase and serve a copy on every adverse party on the motion, free of charge; and
  - (b) is liable for the party and party costs of every adverse party on the motion in respect of the cross-examination, regardless of the outcome of the proceeding, unless the court orders otherwise.

**EVIDENCE BY EXAMINATION OF A WITNESS*****Before the Hearing***

**39.03** (1) A person may be examined as a witness before the hearing of a pending motion or application for the purpose of having a transcript of his or her evidence available for use at the hearing.

(2) A witness examined under subrule (1) may be cross-examined by the examining party and any other party and may then be re-examined by the examining party on matters raised by other parties, and the re-examination may take the form of cross-examination.

***At the Hearing***

(3) With leave of the presiding judge or officer, a person may be examined at the hearing of a motion or application in the same manner as at a trial.

***Summons to Witness***

(4) The attendance of a person to be examined under subrule (3) may be compelled in the same manner as provided in Rule 53 for a witness at a trial.

**EVIDENCE BY EXAMINATION FOR DISCOVERY**

**39.04** On the hearing of a motion, an examination for discovery in the proceeding may be used in evidence and rule 31.11 (use of discovery at trial) applies, with necessary modifications.



## PRESERVATION OF RIGHTS IN PENDING LITIGATION

### RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER

#### HOW OBTAINED

**40.01** An interlocutory injunction or mandatory order under section 115 or 116 of the *Courts of Justice Act, 1984* may be obtained on motion to a judge by a party to a pending or intended proceeding.

#### WHERE MOTION MADE WITHOUT NOTICE

##### *Maximum Duration*

**40.02** (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days.

##### *Extension*

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended without notice to the party.

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days.

##### *Labour Injunctions Excepted*

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under section 116 of the *Courts of Justice Act, 1984*.

#### UNDERTAKING

**40.03** On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party.

**RULE 41 APPOINTMENT OF RECEIVER****DEFINITION**

**41.01** In rules 41.02 to 41.06, “receiver” means a receiver or receiver and manager.

**HOW OBTAINED**

**41.02** The appointment of a receiver under section 115 of the *Courts of Justice Act, 1984* may be obtained on motion to a judge in a pending or intended proceeding.

**FORM OF ORDER**

**41.03** An order appointing a receiver shall,

- (a) name the person appointed or refer that issue in accordance with Rule 54;
- (b) specify the amount and terms of the security, if any, to be furnished by the receiver for the proper performance of his or her duties, or refer that issue in accordance with Rule 54;
- (c) state whether the receiver is also appointed as manager and, if necessary, define the scope of his or her managerial powers; and
- (d) contain such directions and impose such terms as are just.

**REFERENCE OF CONDUCT OF RECEIVERSHIP**

**41.04** An order appointing a receiver may refer the conduct of all or part of the receivership in accordance with Rule 54.

**DIRECTIONS**

**41.05** A receiver may obtain directions at any time on motion to a judge, unless there has been a reference of the conduct of the receivership, in which case the motion shall be made to the referee.

**DISCHARGE**

**41.06** A receiver may be discharged only by the order of a judge.

**RULE 42 CERTIFICATE OF PENDING LITIGATION**

**ISSUING OF CERTIFICATE**

***Court Order Required***

**42.01** (1) A certificate of pending litigation (Form 42A) under section 117 of the *Courts of Justice Act, 1984* may be issued by a registrar only under an order of the court.

***Claim for Certificate to be in Originating Process***

(2) A party who seeks a certificate of pending litigation shall include a claim for it in the originating process or pleading that commences the proceeding, together with a description of the land in question sufficient for registration.

***Motion Without Notice***

(3) A motion for an order under subrule (1) may be made without notice.

***Order to be Served Forthwith***

(4) A party who obtains an order under subrule (1) shall forthwith serve it on all parties against whom an interest in land is claimed in the proceeding.

**DISCHARGE OF CERTIFICATE**

**42.02** An order discharging a certificate of pending litigation under subsection 117(6) of the *Courts of Justice Act, 1984* may be obtained on motion to the court.

**RULE 43 INTERPLEADER****DEFINITION**

**43.01** In rules 43.02 to 43.04, “property” means personal property and includes a debt.

**WHERE AVAILABLE**

**43.02** Where two or more persons make adverse claims in respect of property against a person who,

- (a) claims no beneficial interest in the property, other than a lien for costs, fees or expenses; and
- (b) is willing to deposit the property with the court or dispose of it as the court directs,

that person may seek an interpleader order (Form 43A).

**HOW OBTAINED*****By Application Where no Proceeding Commenced***

**43.03** (1) Where no proceeding has been commenced in respect of the property in question, a person seeking an interpleader order shall make an application in the Supreme Court to a judge naming all the claimants as respondents and shall, in the notice of application, require them to attend the hearing to substantiate their claims.

***By Motion Where Proceeding has been Commenced***

(2) Where a proceeding has been commenced in respect of the property, a person seeking an interpleader order shall make a motion in the proceeding to the court on notice to all the claimants and shall, in the notice of motion, require them to attend the hearing to substantiate their claims.

***Affidavit in Support***

(3) The application or motion shall be supported by an affidavit identifying the property and containing the names and addresses of all claimants to the property of whom the deponent has knowledge and stating that the applicant or moving party,

- (a) claims no beneficial interest in the property, other than a lien for costs, fees or expenses;
- (b) does not collude with any of the claimants; and
- (c) is willing to deposit the property with the court or dispose of it as the court directs.

**DISPOSITION OF APPLICATION OR MOTION**

**43.04** (1) On the hearing of an application or motion for an interpleader order the court may,

- (a) order that the applicant or moving party deposit the property with an officer of the court, sell it as the court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;



- (b) declare that, on compliance with an order under clause (a), the liability of the applicant or moving party in respect of the property or its proceeds is extinguished; and
  - (c) order that the costs of the applicant or moving party be paid out of the property or its proceeds.
- (2) In an order under subrule (1), the court may,
- (a) order a claimant to be made a party to a proceeding already commenced in substitution for or in addition to the moving party;
  - (b) order the trial of an issue between the claimants, define the issue to be tried and direct which claimant is to be plaintiff and which defendant;
  - (c) where the question is one of law and the facts are not in dispute, decide the question without directing the trial of an issue;
  - (d) on the request of a claimant, determine the rights of the claimants in a summary manner, if, having regard to the value of the property and the nature of the issues in dispute, it seems desirable to do so;
  - (e) where a claimant fails to attend the hearing, or attends and fails to comply with an order made in the course of the proceeding, make an order declaring that the claimant and all persons claiming under the claimant are forever barred from prosecuting a claim against the applicant or moving party and all persons claiming under the applicant or moving party, without affecting the rights of the claimants as between themselves;
  - (f) stay any further step in a proceeding in respect of the property; and
  - (g) make such other order as is just.
- (3) Where a motion for an interpleader order is made to a master and raises a genuine issue of fact or of law, the motion shall be adjourned to be heard by a judge.

## **SHERIFF'S INTERPLEADER**

### ***Definition***

- 43.05** (1) In this rule,
- (a) “property” means real or personal property and includes a debt; and
  - (b) “writ of execution” and “execution” include an order of attachment under the Absconding Debtors Act.

### ***Sheriff May Move in Respect of Property Seized***

- (2) A sheriff may make a motion for an interpleader order (Form 43B) in respect of property or the proceeds of property taken or intended to be taken by the sheriff in the execution of any enforcement process where,
- (a) the sheriff has received a claim in respect of the property; and
  - (b) an execution creditor has given the sheriff notice under rule 60.13 disputing the claim or the execution creditor at whose direction the sheriff took or intended to take the property has not given the notice required by subrule 60.13(2) within the time prescribed by that subrule.

### ***Procedure***

- (3) The sheriff shall make only one motion in respect of the property.

(4) The motion may be made in any proceeding in which a writ of execution was issued against the debtor, subject to subrules (6) to (8), and shall name as responding parties every claimant and all execution creditors, even though their executions were not issued in the same proceeding.

***Sale of Property that is Security for Debt***

(5) Where personal property has been seized in execution by a sheriff, and a claimant claims to be entitled to the property as security for a debt, the court may order a sale of the property and direct that the proceeds of sale or an amount sufficient to answer the claim be paid into court pending determination of the claim.

***Executions from Different Courts***

(6) Where a sheriff has an execution issued by the Supreme Court, whether or not the sheriff has an execution issued by another court, he or she shall make the interpleader motion in the Supreme Court and the motion shall be heard in his or her county, notwithstanding rule 37.03 (place of hearing of motions).

(7) Where a sheriff has one or more executions issued only by the District Court, or executions issued by the District Court and a court other than the Supreme Court, the sheriff shall make the interpleader motion in the District Court and the motion shall be heard in his or her county, notwithstanding rule 37.03 (place of hearing of motions).

(8) Where a sheriff has an execution issued by any court other than the Supreme Court, District Court or Provincial Court (Civil Division) and has no execution issued by the Supreme Court or the District Court, the sheriff shall seek the interpleader order in the Supreme Court by way of an application to a judge, notwithstanding that subrule (1) provides for a motion, and rules 43.01 to 43.04 and subrules (1) to (5) apply to the application, with necessary modifications.

**RULE 44 INTERIM RECOVERY OF PERSONAL PROPERTY**

**MOTION FOR INTERIM ORDER**

**44.01** (1) An interim order under section 118 of the Courts of Justice Act, 1984 for recovery of possession of personal property may be obtained on motion by the plaintiff, supported by an affidavit setting out,

- (a) a description of the property sufficient to make it readily identifiable;
- (b) the value of the property;
- (c) that the plaintiff is the owner or lawfully entitled to possession of the property;
- (d) that the property was unlawfully taken from the possession of the plaintiff or is unlawfully detained by the defendant; and
- (e) the facts and circumstances giving rise to the unlawful taking or detention.

(2) The notice of motion shall be served on the defendant unless the court is satisfied that there is reason to believe that the defendant may improperly attempt to prevent recovery of possession of the property or that, for any other sufficient reason, the order should be made without notice.

**ORDER TO CONTAIN DESCRIPTION AND VALUE OF PROPERTY**

**44.02** An interim order for recovery of possession of personal property shall contain a description of the property sufficient to make it readily identifiable and shall state the value of the property.

**DISPOSITION OF MOTION**

*Where Made on Notice*

**44.03** (1) On a motion for an interim order for recovery of possession of personal property made on notice to the defendant, the court may,

- (a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves, and direct the sheriff to take the property from the defendant and give it to the plaintiff;
- (b) order the defendant to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the plaintiff security in such form and amount as the court approves, and direct that the property remain in the possession of the defendant; or
- (c) make such other order as is just.

*Where Made Without Notice*

(2) On a motion for an interim order for the recovery of possession of personal property made without notice to the defendant, the court may,

- (a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves, and direct the sheriff to take and detain the property for a period of ten days



after service of the interim order on the defendant before giving it to the plaintiff; or

- (b) make such other order as is just.

### CONDITION AND FORM OF SECURITY

**44.04** (1) Where an interim order for the recovery of possession of personal property requires either party to give security, the condition of the security shall be that the party providing the security will return the property to the opposite party without delay when ordered to do so, and pay any damages and costs the opposite party has sustained by reason of the interim order.

(2) Where the security is by bond, the bond shall be in Form 44A and shall remain in force until the security is released under rule 44.06.

(3) Where the bond is to be given by a person other than a guarantee company to which the *Guarantee Companies Securities Act* applies, the person giving the bond shall first be approved by the court.

### SETTING ASIDE ORDER

**44.05** The court on motion may set aside or vary an interim order for the recovery of possession of personal property or stay enforcement of the order.

### RELEASE OF SECURITY

**44.06** Any security furnished pursuant to an order made under rule 44.03 may be released on the filing of the written consent of the parties or by order of the court.

### DUTY OF SHERIFF

**44.07** (1) Before proceeding to enforce an interim order for the recovery of possession of personal property, the sheriff shall ascertain that any security required by the order has been given.

(2) The sheriff shall serve the order on the defendant when the property or any part of it is recovered or as soon thereafter as is possible.

(3) Where the sheriff is unable to comply with the order, or it is dangerous to do so, the sheriff may move for directions from the court.

(4) The sheriff shall, without delay after attempting to enforce the order and in any event within ten days after service of the order, report to the plaintiff on what property has been recovered and, where the sheriff has failed to recover possession of all or part of the property, on what property has not been recovered and the reason for his or her failure to recover it.

### WHERE DEFENDANT PREVENTS RECOVERY

**44.08** Where the sheriff reports that the defendant has prevented the recovery of all or part of the property, the court may make an order,

- (a) directing the sheriff to take any other personal property of the defendant, to the value of the property that the sheriff was prevented from recovering, and give it to the plaintiff; and



- (b) directing the plaintiff to hold the substituted property until the defendant surrenders to the plaintiff the property that the sheriff was prevented from recovering.

**RULE 45 INTERIM PRESERVATION OF PROPERTY****INTERIM ORDER FOR PRESERVATION OR SALE**

**45.01** (1) The court may make an interim order for the custody or preservation of any property in question in a proceeding or relevant to an issue in a proceeding, and for that purpose may authorize entry on or into any property in the possession of a party or of a person not a party.

(2) Where the property is of a perishable nature or likely to deteriorate or for any other reason ought to be sold, the court may order its sale in such manner and on such terms as are just.

**SPECIFIC FUND**

**45.02** Where the right of a party to a specific fund is in question, the court may order the fund to be paid into court or otherwise secured on such terms as are just.

**RECOVERY OF PERSONAL PROPERTY HELD AS SECURITY**

**45.03** (1) Where in a proceeding a party from whom the recovery of personal property is claimed does not dispute the title of the party making the claim, but claims the right to retain the property as security for a debt, the court may order the party claiming recovery of the property to pay into court or otherwise give security for the debt and such further sum, if any, for interest and costs as the court directs.

(2) The affidavit in support of a motion under subrule (1) shall disclose the name of every person asserting a claim to possession of the property of whom the party claiming recovery has knowledge and every such person shall be served with notice of the motion.

(3) On compliance with an order under subrule (1), the property shall be given to the party claiming recovery and the money in court or the security shall await the outcome of the proceeding.

## PRE-TRIAL PROCEDURES

### RULE 46 PLACE OF TRIAL

#### TO BE NAMED IN STATEMENT OF CLAIM

**46.01** (1) The plaintiff shall name in the statement of claim as the place of trial a place in which the court normally sits in the county in which the plaintiff proposes that the action be tried.

(2) Where a statute requires an action to be tried in a particular county, the plaintiff shall name as the place of trial a place in which the court normally sits in that county.

(3) In a divorce action, the place of trial shall be named in accordance with rule 70.17, and in a family law proceeding, it shall be named in accordance with rule 71.05.

#### WHERE TRIAL TO BE HELD

**46.02** The trial shall be held at the place named in the statement of claim unless the court makes an order under rule 46.03 changing the place of trial.

#### ORDER CHANGING PLACE OF TRIAL

**46.03** (1) Where a plaintiff has named as the place of trial a place other than that required by statute, the court on motion by any party shall order that the trial be held at the place required.

(2) In any other case, the court on motion by any party may order that the trial be held at a place other than that named in the statement of claim where the court is satisfied that,

- (a) the balance of convenience substantially favours the holding of the trial at another place; or
- (b) it is likely that a fair trial cannot be had at the place named in the statement of claim.

**RULE 47 JURY NOTICE****ACTIONS TO BE TRIED WITH A JURY**

**47.01** A party to an action may require that the issues of fact be tried or the damages be assessed, or both, by a jury, by delivering a jury notice (Form 47A) at any time before the close of pleadings, unless section 122 of the *Courts of Justice Act, 1984* or another statute requires that the action be tried without a jury.

**STRIKING OUT JURY NOTICE*****Where Jury Notice not in Accordance with Statute or Rules***

**47.02** (1) A motion to strike out a jury notice on the ground that,

(a) a statute requires a trial without a jury; or

(b) the jury notice was not delivered in accordance with rule 47.01,

may be made to the court.

***Where Jury Trial Inappropriate***

(2) A motion to strike out a jury notice on the ground that the action ought to be tried without a jury shall be made to a judge.

***Discretion of Trial Judge***

(3) Where an order striking out a jury notice is refused, the refusal does not affect the discretion of the trial judge, in a proper case, to try the action without a jury.



**RULE 48 LISTING FOR TRIAL****WHEN AND BY WHOM ACTION MAY BE SET DOWN FOR TRIAL**

**48.01** After the close of pleadings, any party to an action or to a counterclaim or crossclaim in the action who is not in default under these rules or an order of the court and who is ready for trial may set the action down for trial, together with any counterclaim or crossclaim.

**HOW ACTION IS SET DOWN FOR TRIAL*****Defended Action***

**48.02** (1) Where an action is defended, a party who wishes to set it down for trial may do so by serving,

- (a) a notice of readiness for trial (Form 48A) on every party to the action or to a counterclaim or crossclaim in the action and on any third or subsequent party; and
- (b) a trial record prepared in accordance with rule 48.03 on every party to the action or to a counterclaim or crossclaim in the action and on any third or subsequent party who has delivered a statement of defence in the main action,

and forthwith filing the notice and trial record with proof of service.

***Undefended Action***

(2) Where an action is undefended, a party who wishes to set it down for trial may do so by filing a trial record prepared in accordance with rule 48.03.

(3) Where an undefended action is to be tried at a place other than where it was commenced, the party filing the trial record shall by requisition require the court file, including the trial record, to be sent to the court office at the place of trial.

**TRIAL RECORD**

**48.03** (1) The trial record shall contain, in the following order,

- (a) a table of contents, describing each document by its nature and date;
- (b) a copy of any jury notice;
- (c) a copy of the pleadings, including those relating to any counterclaim or crossclaim;
- (d) a copy of any financial statement delivered under rule 70.14 or 71.04 or waiver of financial statements filed under subrule 70.14(3);
- (e) a copy of any demand or order for particulars of a pleading or financial statement and the particulars delivered in response;
- (f) a copy of any notice of amounts and particulars of special damages delivered under clause 25.06(9)(b);
- (g) a copy of any order respecting the trial; and
- (h) a certificate signed by the solicitor setting the action down, stating,
  - (i) that the record contains the documents required by clauses (a) to (g),
  - (ii) that the time for delivery of pleadings has expired,

- (iii) where applicable, that a defendant who has failed to deliver a statement of defence has been noted in default, and
- (iv) where applicable, that judgment has been obtained or that the action has been discontinued or dismissed against a defendant.

(2) It is the responsibility of the party who filed the trial record to place with the record, before the trial, a copy of,

- (a) any notice of amounts and particulars of special damages delivered after the filing of the trial record;
- (b) any order respecting the trial made after the filing of the trial record;
- (c) any memorandum signed by counsel, or any order made by the court, following a pre-trial conference;
- (d) in an undefended action, any affidavit to be used in evidence; and
- (e) any report of the Official Guardian and supporting affidavit and any dispute of, or waiver of the right to dispute, the report or affidavit.

### CONSEQUENCES OF SETTING DOWN OR CONSENT

**48.04** (1) Any party who has set an action down for trial and any party who has consented to the action being placed on a trial list shall not initiate or continue any motion or form of discovery without leave of the court.

(2) Subrule (1) does not,

- (a) relieve a party from complying with his or her undertakings on an examination for discovery;
- (b) relieve a party from any obligation imposed by,
  - (i) rule 30.07 (disclosure of documents or errors subsequently discovered),
  - (ii) rule 30.09 (abandonment of claim of privilege),
  - (iii) rule 31.07 (disclosure of information refused on discovery),
  - (iv) rule 31.09 (disclosure of information subsequently obtained),
  - (v) rule 51.03 (duty to respond to request to admit),
  - (vi) rule 53.03 (service of report of expert witness), or
  - (vii) rule 70.14 (delivery of financial statement); or
- (c) preclude a party from resorting to the provisions of rule 51.02 (request to admit facts or documents) or subrule 70.18(2) (motion to transfer divorce action).

### PLACING UNDEFENDED ACTION ON TRIAL LIST

**48.05** In an undefended action, on receipt of the trial record the registrar at the place of trial shall forthwith place the action on the appropriate trial list.

### PLACING DEFENDED ACTION ON TRIAL LIST

#### *Delivery of Notice of Listing for Trial*

**48.06** (1) Where an action is defended, a party who wishes to have the action placed on the trial list shall serve on every party to the action or to a counterclaim or crossclaim

in the action and on any third or subsequent party who has delivered a statement of defence in the main action a notice of listing for trial (Form 48B),

- (a) sixty days after the action is set down for trial; or
- (b) immediately on the filing of the consent in writing of every party other than the party who set the action down for trial,

and shall forthwith file the notice with proof of service.

(2) Where an action is a third party claim, a party who wishes to have the third party claim placed on the trial list shall in addition serve the notice of listing for trial on the plaintiff in the main action within the time for service on the parties to the third party claim, and shall forthwith file the notice with proof of service.

#### ***Where Trial at Another Place***

(3) Where an action is to be tried at a place other than where it was commenced, the party filing the notice of listing for trial shall by requisition require the court file, including the trial record, to be sent to the court at the place of trial.

#### ***Registrar to Place on Trial List***

(4) On receipt of the notice of listing for trial with proof of service, the registrar at the place of trial shall forthwith place the action on the appropriate trial list.

(5) An action shall not be placed on a trial list for a sitting outside Toronto unless the notice of listing for trial, with proof of service, is received by the registrar at the place of trial at least ten days before the commencement of the sitting, except where,

- (a) in a Supreme Court action, a judge of the High Court; or
- (b) in a District Court action, a judge,

orders otherwise.

### **CONSEQUENCES OF ACTION BEING PLACED ON TRIAL LIST**

**48.07** Where an action is placed on a trial list,

- (a) all parties shall be deemed to be ready for trial;
- (b) a pre-trial conference in the action shall proceed as scheduled unless the judge or officer presiding at the conference orders otherwise; and
- (c) the trial shall proceed when the action is reached on the trial list unless a judge orders otherwise.

### **SEPARATE TRIAL LISTS**

**48.08** (1) Actions to be tried with a jury shall be placed on a trial list of jury actions and actions to be tried without a jury shall be placed on a trial list of non-jury actions.

(2) Where the next scheduled sitting of the Supreme Court in a place outside Toronto is for the trial of jury actions, the trial list of non-jury actions shall be added at the end of the trial list of jury actions.

### **SEPARATE SPEEDY TRIAL LIST**

**48.09** The registrar shall keep a separate speedy trial list on which only actions for which a speedy trial has been ordered shall be listed.



**ACTIONS TRAVERSED OR REMAINING ON LIST AT CONCLUSION OF SITTING**

**48.10** Unless a judge orders otherwise, all actions traversed to the next sitting and all actions remaining on the trial list at the conclusion of a sitting shall stand in the same order at the beginning of the next appropriate trial list.

**ACTIONS STRUCK OFF TRIAL LIST**

**48.11** Where an action is struck off a trial list, it shall not thereafter be placed on any trial list except with leave of a judge.

**DUTY TO INFORM REGISTRAR OF SETTLEMENT**

**48.12** Every party to an action, whether it is placed on a trial list or not, shall promptly inform the registrar of any settlement of the action and shall confirm in writing that the action has been settled.

**APPLICATION OF THE RULE**

**48.13** Rules 48.01 to 48.12 apply to any proceeding in which the court has directed the trial of an issue, unless the court orders otherwise.

**FAILURE TO PLACE ACTION ON TRIAL LIST WITHIN ONE YEAR***Notice of Status Hearing*

**48.14** (1) Where an action in which a statement of defence has been filed has not been placed on a trial list or terminated by any means within one year after the filing of a statement of defence, the registrar shall mail to the solicitors of record and, where a party acts in person, to that party, a notice of status hearing (Form 48C) at least ninety days before the date fixed for the hearing, and the hearing shall be held before a judge or local judge.

(2) A solicitor who receives a notice of status hearing shall forthwith give a copy of the notice to his or her client.

*Attendance at Status Hearing*

(3) Unless the action has been placed on a trial list or terminated by any means before the date fixed for the status hearing, the solicitors of record shall attend and the parties may attend at the hearing.

(4) Where a party represented by a solicitor does not attend at the hearing, the party's solicitor shall file proof that a copy of the notice was given to the party.

*Disposition at Status Hearing*

(5) At the status hearing, the plaintiff shall show cause why the action should not be dismissed for delay, and,

- (a) if the presiding judge is satisfied that the action should proceed, the judge may set time periods for the completion of the remaining steps necessary to place the action on a trial list and may order that the action be placed on a trial list within a specified time; or
- (b) if the presiding judge is not satisfied that the action should proceed, the judge may dismiss the action for delay.



***Dismissal by Registrar***

(6) Where an action is not placed on a trial list or terminated by any means within the time specified in an order made under clause (5)(a), the registrar shall by order dismiss the action for delay, with costs.

***Plaintiff Under Disability***

(7) Where the plaintiff is under disability, the action shall not be dismissed for delay unless,

- (a) notice of the status hearing is given to the Official Guardian, except where the Public Trustee is committee of the estate or litigation guardian of the plaintiff; or
- (b) the presiding judge or a judge on motion orders otherwise.

***Effect of Dismissal***

(8) Rules 24.03 to 24.05 (effect of dismissal for delay) apply to an action dismissed by the registrar for delay.

**RULE 49 OFFER TO SETTLE****DEFINITIONS**

**49.01** In rules 49.02 to 49.14,

- (a) “defendant” includes a respondent;
- (b) “plaintiff” includes an applicant.

**WHERE AVAILABLE**

**49.02** (1) A party to a proceeding may serve on any other party an offer to settle any one or more of the claims in the proceeding on the terms specified in the offer to settle (Form 49A).

(2) Subrule (1) and rules 49.03 to 49.14 do not apply to motions, but nothing in this subrule prevents a party from making a proposal for settlement of a motion or the court from taking the proposal into account in making an order in respect of costs.

**TIME FOR MAKING OFFER**

**49.03** An offer to settle may be made at any time, but where the offer to settle is made less than seven days before the hearing commences, the costs consequences referred to in rule 49.10 do not apply.

**WITHDRAWAL OR EXPIRY OF OFFER*****Withdrawal***

**49.04** (1) An offer to settle may be withdrawn at any time before it is accepted by serving written notice of withdrawal of the offer on the party to whom the offer was made.

(2) The notice of withdrawal of the offer may be in Form 49B.

***Offer Expiring after Limited Time***

(3) Where an offer to settle specifies a time within which it may be accepted and it is not accepted or withdrawn within that time, it shall be deemed to have been withdrawn when the time expires.

***Offer Expires when Court Disposes of Claim***

(4) An offer may not be accepted after the court disposes of the claim in respect of which the offer is made.

**EFFECT OF OFFER**

**49.05** An offer to settle shall be deemed to be an offer of compromise made without prejudice.

**DISCLOSURE OF OFFER TO COURT**

**49.06** (1) No statement of the fact that an offer to settle has been made shall be contained in any pleading.

(2) Where an offer to settle is not accepted, no communication respecting the offer shall be made to the court at the hearing of the proceeding until all questions of liability and the relief to be granted, other than costs, have been determined.

**ACCEPTANCE OF OFFER*****Generally***

**49.07** (1) An offer to settle may be accepted by serving an acceptance of offer (Form 49C) on the party who made the offer, at any time before it is withdrawn or the court disposes of the claim in respect of which it is made.

(2) Where a party to whom an offer to settle is made rejects the offer or responds with a counter-offer that is not accepted, the party may thereafter accept the original offer to settle, unless it has been withdrawn or the court has disposed of the claim in respect of which it was made.

***Payment into Court or to Trustee as Term of Offer***

(3) An offer by a plaintiff to settle a claim in return for the payment of money by a defendant may include a term that the defendant pay the money into court or to a trustee and the defendant may accept the offer only by paying the money in accordance with the offer and notifying the plaintiff of the payment.

***Payment into Court or to Trustee as a Condition of Acceptance***

(4) Where a defendant offers to pay money to the plaintiff in settlement of a claim, the plaintiff may accept the offer with the condition that the defendant pay the money into court or to a trustee and, where the offer is so accepted and the defendant fails to pay the money in accordance with the acceptance, the plaintiff may proceed as provided in rule 49.09 for failure to comply with the terms of an accepted offer.

***Costs***

(5) Where an accepted offer to settle does not provide for the disposition of costs, the plaintiff is entitled,

- (a) where the offer was made by the defendant, to his or her costs assessed to the date the plaintiff was served with the offer; or
- (b) where the offer was made by the plaintiff, to his or her costs assessed to the date that the notice of acceptance was served.

***Incorporating into Judgment***

(6) Where an offer is accepted, the court may incorporate any of its terms into a judgment.

***Payment out of Court***

(7) Where money is paid into court under subrule (3) or (4), it may be paid out on consent or by order.

**PARTIES UNDER DISABILITY**

**49.08** A party under disability may make, withdraw and accept an offer to settle, but no acceptance of an offer made by him or her and no acceptance by him or her of an offer made by another party is binding on him or her until the settlement has been approved as provided in rule 7.08.

**FAILURE TO COMPLY WITH ACCEPTED OFFER**

**49.09** Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

- (a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or
- (b) continue the proceeding as if there had been no accepted offer to settle.

## **COSTS CONSEQUENCES OF FAILURE TO ACCEPT**

### ***Plaintiff's Offer***

**49.10** (1) Where an offer to settle,

- (a) is made by a plaintiff at least seven days before the commencement of the hearing;
- (b) is not withdrawn and does not expire before the commencement of the hearing; and
- (c) is not accepted by the defendant,

and the plaintiff obtains a judgment as favourable as or more favourable than the terms of the offer to settle, the plaintiff is entitled to party and party costs to the date the offer to settle was served and solicitor and client costs from that date, unless the court orders otherwise.

### ***Defendant's Offer***

(2) Where an offer to settle,

- (a) is made by a defendant at least seven days before the commencement of the hearing;
- (b) is not withdrawn and does not expire before the commencement of the hearing; and
- (c) is not accepted by the plaintiff,

and the plaintiff obtains a judgment as favourable as or less favourable than the terms of the offer to settle, the plaintiff is entitled to party and party costs to the date the offer was served and the defendant is entitled to party and party costs from that date, unless the court orders otherwise.

## **MULTIPLE DEFENDANTS**

**49.11** Where there are two or more defendants, the plaintiff may offer to settle with any defendant and any defendant may offer to settle with the plaintiff, but where the defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim and rights of contribution or indemnity may exist between the defendants, the costs consequences prescribed by rule 49.10 do not apply to an offer to settle unless,

- (a) in the case of an offer made by the plaintiff, the offer is made to all the defendants, and is an offer to settle the claim against all the defendants; or
- (b) in the case of an offer made to the plaintiff,
  - (i) the offer is an offer to settle the plaintiff's claim against all the defendants and to pay the costs of any defendant who does not join in making the offer; or
  - (ii) the offer is made by all the defendants and is an offer to settle the claim against all the defendants, and, by the terms of the offer, they are made



jointly and severally liable to the plaintiff for the whole amount of the offer.

### **OFFER TO CONTRIBUTE**

**49.12** (1) Where two or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim, any defendant may make to any other defendant an offer to contribute (Form 49D) toward a settlement of the claim.

(2) The court may take an offer to contribute into account in determining whether another defendant should be ordered,

- (a) to pay the costs of the defendant who made the offer; or
- (b) to indemnify the defendant who made the offer for any costs he or she is liable to pay to the plaintiff,

or to do both.

(3) Rules 49.04, 49.05, 49.06 and 49.13 apply to an offer to contribute as if it were an offer to settle.

### **DISCRETION OF COURT**

**49.13** Notwithstanding rules 49.03, 49.10 and 49.11, the court, in exercising its discretion with respect to costs, may take into account any offer to settle made in writing, the date the offer was made and the terms of the offer.

### **APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS**

**49.14** Rules 49.01 to 49.13 apply, with necessary modifications, to counterclaims,\* crossclaims and third party claims.

**RULE 50 PRE-TRIAL CONFERENCE****WHERE AVAILABLE**

**50.01** Where an action has been placed on a trial list or an application is ready to be heard, a judge may, at the request of a party or on his or her own initiative, direct the solicitors for the parties, either with or without the parties, and any party not represented by a solicitor, to appear before a judge or officer for a pre-trial conference to consider,

- (a) the possibility of settlement of any or all of the issues in the proceeding;
- (b) the simplification of the issues;
- (c) the possibility of obtaining admissions that may facilitate the hearing;
- (d) the question of liability;
- (e) the amount of damages, where damages are claimed;
- (f) the estimated duration of the hearing;
- (g) the advisability of having the court appoint an expert;
- (h) the advisability of fixing a date for the hearing;
- (i) the advisability of directing a reference; and
- (j) any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

**MEMORANDUM OR ORDER**

**50.02** (1) At the conclusion of the conference,

- (a) counsel may sign a memorandum setting out the results of the conference; and
- (b) where the conference is conducted by a judge, the judge may make such order as he or she considers necessary or advisable with respect to the conduct of the proceeding,

and the memorandum or order binds the parties unless the judge or officer presiding at the hearing of the proceeding orders otherwise to prevent injustice.

(2) A copy of a memorandum or order under subrule (1) shall be placed with the trial or application record.

**NO DISCLOSURE TO THE COURT**

**50.03** No communication shall be made to the judge or officer presiding at the hearing of the proceeding or a motion or reference in the proceeding with respect to any statement made at a pre-trial conference, except as disclosed in the memorandum or order under rule 50.02.

**PRE-TRIAL JUDGE CANNOT BE TRIAL JUDGE**

**50.04** (1) A judge who conducts a pre-trial conference in a proceeding shall not preside at the hearing of the proceeding.

(2) Where a pre-trial conference in a divorce action has resolved all the issues, the judge who conducted the pre-trial conference may preside at the trial on consent of the parties.

**DOCUMENTS TO BE MADE AVAILABLE**

**50.05** All documents intended to be used at the hearing that may be of assistance in achieving the purposes of a pre-trial conference, such as medical reports and reports of experts, shall be made available to the pre-trial conference judge or officer.

**COSTS OF PRE-TRIAL CONFERENCE**

**50.06** A judge who conducts a pre-trial conference may make an order for costs of the pre-trial conference but,

(a) in the absence of such an order; or

(b) where the conference is conducted by an officer,

the costs shall be assessed as part of the costs of the proceeding.

**CONFERENCE BEFORE TRIAL JUDGE**

**50.07** Subrule 50.04(1) does not prevent a judge before whom a proceeding has been called for hearing from holding a conference either before or during the hearing to consider any matter that may assist in the just, most expeditious and least expensive disposition of the proceeding without disqualifying himself or herself from presiding at the hearing.

**RULE 51 ADMISSIONS****INTERPRETATION**

**51.01** In rules 51.02 to 51.06, 'authenticity' includes the fact that,

- (a) a document that is said to be an original was printed, written, signed or executed as it purports to have been;
- (b) a document that is said to be a copy is a true copy of the original; and
- (c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.

**REQUEST TO ADMIT FACT OR DOCUMENT**

**51.02** (1) A party may at any time, by serving a request to admit (Form 51A), request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

(2) A copy of any document mentioned in the request to admit shall, where practicable, be served with the request, unless a copy is already in the possession of the other party.

**EFFECT OF REQUEST TO ADMIT*****Response Required Within Twenty Days***

**51.03** (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to request to admit (Form 51B).

***Deemed Admission Where No Response***

(2) Where the party on whom the request is served fails to serve a response as required by subrule (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

***Deemed Admission Unless Response Contains Denial or Reason for Refusal to Admit***

(3) A party shall also be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request, unless the party's response,

- (a) specifically denies the truth of a fact or the authenticity of a document mentioned in the request; or
- (b) refuses to admit the truth of a fact or the authenticity of a document and sets out the reason for the refusal.

**COSTS ON REFUSAL TO ADMIT**

**51.04** Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at the hearing, the court may take the denial or refusal into account in exercising its discretion respecting costs.



**WITHDRAWAL OF ADMISSION**

**51.05** An admission made in response to a request to admit, a deemed admission under rule 51.03 or an admission in a pleading may be withdrawn on consent or with leave of the court.

**JUDGMENT ON ADMISSION OF FACTS OR DOCUMENTS**

**51.06** (1) Where an admission of the truth of a fact or the authenticity of a document is made,

- (a) in an affidavit filed by a party,
- (b) in the examination for discovery of a party or a person examined for discovery on behalf of a party; or
- (c) by a party on any other examination under oath or affirmation in or out of court,

any party may make a motion to a judge in the same or another proceeding for such order as he or she may be entitled to on the admission without waiting for the determination of any other question between the parties, and the judge may make such order as is just.

(2) Where an admission of the truth of a fact or the authenticity of a document is made by a party in a pleading or is made or deemed to be made by a party in response to a request to admit, any party may make a motion in the same proceeding to a judge for such order as he or she may be entitled to on the admission without waiting for the determination of any question between the parties, and the judge may make such order as is just.

## TRIALS

### RULE 52 TRIAL PROCEDURE

#### FAILURE TO ATTEND AT TRIAL

**52.01** (1) Where an action is called for trial and all the parties fail to attend, the trial judge may strike the action off the trial list.

- (2) Where an action is called for trial and a party fails to attend, the trial judge may,
- (a) proceed with the trial in the absence of the party;
  - (b) where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim;
  - (c) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any; or
  - (d) make such other order as is just.

(3) A judge may set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at the trial.

#### ADJOURNMENT OF TRIAL

**52.02** A judge may postpone or adjourn a trial to such time and place, and on such terms, as are just.

#### COURT APPOINTED EXPERTS

##### *Appointment by Judge*

**52.03** (1) On motion by a party or on his or her own initiative, a judge may, at any time, appoint one or more independent experts to inquire into and report on any question of fact or opinion relevant to an issue in the action.

(2) The expert shall be named by the judge and, where possible, shall be an expert agreed on by the parties.

##### *Contents of Order Appointing Expert*

(3) The order shall contain the instructions to be given to the expert and the judge may make such further orders as he or she considers necessary to enable the expert to carry out the instructions, including, on motion by a party, an order for,

- (a) inspection of property under Rule 32; or
- (b) the physical or mental examination of a party under section 119 of the *Courts of Justice Act, 1984*.

##### *Remuneration of Expert*

(4) The remuneration of an expert shall be fixed by the judge who appoints the expert, and shall include a fee for the expert's report and an appropriate sum for each day that attendance at the trial is required.

(5) The responsibility of the parties for payment of the remuneration of an expert shall be determined in the first instance by the judge.

(6) Where a motion by a party for the appointment of an expert is opposed, the judge may, as a condition of making the appointment, require the party seeking the appointment to give such security for the remuneration of the expert as is just.

### ***Report***

(7) The expert shall prepare a report and send it to the registrar and the registrar shall send a copy of the report to every party.

(8) The report shall be filed as evidence at the trial of the action unless the trial judge orders otherwise.

(9) The judge may direct the expert to make a further or supplementary report, and subrules (7) and (8) apply to that report.

### ***Cross-examination of Expert***

(10) Any party may cross-examine the expert at the trial.

### ***Liability of Parties for Remuneration of Expert***

(11) The liability of the parties for payment of the remuneration of the expert shall be determined by the trial judge at the end of the trial, and a party who has paid the expert in accordance with a determination under subrule (5), if not the party determined to be liable for payment under this subrule, shall be indemnified by the party determined to be liable.

## **EXHIBITS**

### ***Marking and Numbering***

**52.04** (1) Exhibits shall be marked and numbered consecutively, and the registrar attending the trial shall make a list of the exhibits, giving a description of each exhibit, and stating by whom it was put in evidence and, where the person who produced it is not a party or his or her solicitor, the name of that person.

### ***Return of Exhibits***

(2) At any time following the trial judgment, on requisition by the solicitor or party who put an exhibit in evidence or the person who produced it and on the filing of the consent of all parties represented at the trial, the registrar may return the exhibit to the person making the requisition.

(3) Subject to subrule (2), the exhibits shall remain in the possession of the registrar or the registrar of the court to which an appeal is taken,

(a) until the time for an appeal has expired; or

(b) where an appeal has been taken, until it has been disposed of.

(4) On the expiration of the time for appeal or on the disposition of the appeal, the registrar on his or her own initiative shall return the exhibits to the respective solicitors or parties who put the exhibits in evidence at the trial.

## **VIEW BY JUDGE OR JURY**

**52.05** The judge or judge and jury by whom an action is being tried or the court before whom an appeal is being heard may, in the presence of the parties or their counsel, inspect any property concerning which any question arises in the action, or the place where the cause of action arose.

**EXCLUSION OF WITNESSES*****Order for Exclusion***

**52.06** (1) The trial judge may, at the request of any party, order that a witness be excluded from the courtroom until called to give evidence, subject to subrule (2).

***Order not to Apply to Party or Witness Instructing Counsel***

(2) An order under subrule (1) may not be made in respect of a party to the action or a witness whose presence is essential to instruct counsel for the party calling the witness, but the trial judge may require any such party or witness to give evidence before any other witnesses are called to give evidence on behalf of that party.

***No Communication with Excluded Witnesses***

(3) Where an order is made excluding a witness from the courtroom, there shall be no communication to the witness of any evidence given during his or her absence from the courtroom, except with leave of the trial judge, until after the witness has been called and has given evidence.

***Exclusion of Persons Interfering with Trial***

(4) Nothing in this rule prevents the trial judge from excluding from the courtroom any person who is interfering with the proper conduct of the trial.

**ORDER OF PRESENTATION IN JURY TRIALS**

**52.07** (1) On the trial of an action with a jury, the order of presentation shall be regulated as follows, unless the trial judge directs otherwise:

1. The plaintiff may make an opening address and, subject to paragraph 2, shall then adduce evidence.
2. A defendant may, with leave of the trial judge, make an opening address immediately after the opening address of the plaintiff, and before the plaintiff adduces any evidence.
3. When the plaintiff's evidence is concluded, the defendant may make an opening address, unless he or she has already done so, and shall then adduce evidence.
4. When the defendant's evidence is concluded, the plaintiff may adduce any proper reply evidence and the defendant shall then make a closing address, followed by the closing address of the plaintiff.
5. Where a defendant adduces no evidence after the conclusion of the plaintiff's evidence, the plaintiff shall make a closing address, followed by the closing address of the defendant.

(2) Where the burden of proof in respect of all matters in issue in the action lies on the defendant, the trial judge may reverse the order of presentation.

(3) Where there are two or more defendants separately represented, the order of presentation shall be as directed by the trial judge.

(4) Where a party is represented by counsel, the right to address the jury shall be exercised by counsel.

**DISAGREEMENT OF THE JURY**

**52.08** (1) Where the jury,



- (a) disagrees;
- (b) makes no finding on which judgment can be granted; or
- (c) answers some but not all of the questions directed to it or gives conflicting answers, so that judgment cannot be granted on its findings,

the trial judge may direct that the action be retried with another jury at the same or any subsequent sitting, but where there is no evidence on which a judgment for the plaintiff could be based or where for any other reason the plaintiff is not entitled to judgment, the judge shall dismiss the action.

(2) Where the answers given by a jury are sufficient to entitle a party to judgment on some but not all of the claims in the action, the judge may grant judgment on the claims in respect of which the answers are sufficient, and subrule (1) applies to the remaining claims.

### **RECORDING JURY VERDICT**

**52.09** The verdict of a jury shall be endorsed on the trial record.

### **FAILURE TO PROVE A FACT OR DOCUMENT**

**52.10** Where, through accident, mistake or other cause, a party fails to prove some fact or document material to his or her case,

- (a) the judge may proceed with the trial subject to proof of the fact or document afterwards at such time and on such terms as the judge directs; or
- (b) where the case is being tried by a jury, the judge may direct the jury to find a verdict as if the fact or document had been proved, and the verdict shall take effect on proof of the fact or document afterwards as directed, and, if it is not so proved, judgment shall be granted to the opposite party, unless the judge directs otherwise.

**RULE 53 EVIDENCE AT TRIAL****EVIDENCE BY WITNESSES*****Oral Evidence as General Rule***

**53.01** (1) Unless these rules provide otherwise, witnesses at the trial of an action shall be examined orally in court and the examination may consist of direct examination, cross-examination and re-examination.

***Trial Judge to Exercise Control***

(2) The trial judge shall exercise reasonable control over the mode of interrogation of a witness so as to protect the witness from undue harassment or embarrassment and may disallow a question put to a witness that is vexatious or irrelevant to any matter that may properly be inquired into at the trial.

(3) The trial judge may at any time direct that a witness be recalled for further examination.

***Leading Questions on Direct Examination***

(4) Where a witness appears unwilling or unable to give responsive answers, the trial judge may permit the party calling the witness to examine him or her by means of leading questions.

***Interpreter***

(5) Where a witness does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the witness is called, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

(6) Where an interpreter is required under subrule (5), the party calling the witness shall provide the interpreter, unless the interpretation is to be from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General.

**EVIDENCE BY AFFIDAVIT*****With Leave of Court***

**53.02** (1) Before or at the trial of an action, the court may make an order allowing the evidence of a witness or proof of a particular fact or document to be given by affidavit, unless an adverse party reasonably requires the attendance of the deponent at trial for cross-examination.

(2) Where an order is made under subrule (1) before the trial, it may be set aside or varied by the trial judge where it appears necessary to do so in the interest of justice.

***Undefended Actions***

(3) At the trial of an undefended action, the plaintiff's case may be proved by affidavit unless the trial judge orders otherwise.

**EXPERT WITNESSES**

**53.03** (1) A party who intends to call an expert witness at trial shall, not less than ten days before the commencement of the trial, serve on every other party to the action a

report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony.

(2) No expert witness may testify, except with leave of the trial judge, unless subrule (1) has been complied with.

## COMPELLING ATTENDANCE AT TRIAL

### *By Summons to Witness*

**53.04** (1) A party who requires the attendance of a person in Ontario as a witness at a trial may serve the person with a summons to witness (Form 53A) requiring him or her to attend the trial at the time and place stated in the summons, and the summons may also require the person to produce at the trial the documents or other things in his or her possession, control or power relating to the matters in question in the action that are specified in the summons.

### *Summons may be Issued in Blank*

(2) On the request of a party or a solicitor and on payment of the prescribed fee, a registrar shall sign, seal and issue a blank summons to witness and the party or solicitor may complete the summons and insert the names of any number of witnesses.

### *Where Document may be Proved by Certified Copy*

(3) No summons to witness for the production of an original record or document that may be proved by a certified copy shall be served without leave of the court.

### *Summons to be Served Personally*

(4) A summons to witness shall be served on the witness personally and not by an alternative to personal service and, at the same time, attendance money calculated in accordance with Tariff A shall be paid or tendered to the witness.

(5) Service of a summons to witness and the payment or tender of attendance money may be proved by affidavit.

### *Summons in Effect until Attendance No Longer Required*

(6) A summons to witness continues to have effect until the attendance of the witness is no longer required.

### *Sanctions for Failure to Obey Summons*

(7) Where a witness whose evidence is material to an action is served with a summons to witness and the proper attendance money is paid or tendered to him or her, and the witness fails to attend at the trial or to remain in attendance in accordance with the requirements of the summons, the presiding judge may by a warrant for arrest (Form 53B) cause the witness to be apprehended anywhere within Ontario and forthwith brought before the court.

(8) On being apprehended, the witness may be detained in custody until his or her presence is no longer required, or released on such terms as are just, and the witness may be ordered to pay the costs arising out of the failure to attend or remain in attendance.

## INTERPROVINCIAL SUBPOENA

**53.05** A summons to a witness outside Ontario to compel his or her attendance under the *Interprovincial Subpoenas Act* shall be in Form 53C.

**COMPELLING ATTENDANCE OF WITNESS IN CUSTODY**

**53.06** The court may make an order (Form 53D) for attendance of a witness in custody whose evidence is material to an action, directing the officer having custody of a prisoner to produce him or her, on payment of the fee prescribed under the *Administration of Justice Act*, for an examination authorized by these rules or as a witness at a hearing.

**CALLING ADVERSE PARTY AS WITNESS*****Securing Attendance***

**53.07** (1) A party may secure the attendance of a person who is,

- (a) an adverse party;
- (b) an officer, director or sole proprietor of an adverse party; or
- (c) a partner in a partnership that is an adverse party,

as a witness at a trial by,

- (d) serving the person with a summons to witness; or
- (e) serving on the adverse party or the solicitor for the adverse party, at least ten days before the commencement of the trial, a notice of intention to call the person as a witness,

and at the same time paying or tendering attendance money calculated in accordance with Tariff A.

***When Adverse Party may be Called***

(2) Where a person referred to in subrule (1) is in attendance at the trial, a party may call the person as a witness without previous notice or the payment of attendance money, unless,

- (a) the person has already testified; or
- (b) the adverse party or his or her counsel undertakes to call the person as a witness.

***Cross-examination***

(3) A party calling a witness referred to in subrule (1) may cross-examine him or her.

***Failure to Testify***

(4) Where a person required to testify under this rule,

- (a) refuses or neglects to attend at the trial or to remain in attendance at the trial;
- (b) refuses to be sworn; or
- (c) refuses to answer any proper question put to him or her or to produce any document or other thing that he or she is required to produce,

the court may grant judgment in favour of the party calling the witness, adjourn the trial or make such other order as is just.

**EVIDENCE ADMISSIBLE ONLY WITH LEAVE**

**53.08** Where evidence is admissible only with leave of the trial judge under,

- (a) subrule 30.08(1) (failure to disclose document);
- (b) rule 30.09 (failure to abandon claim of privilege);



- (c) rule 31.07 (refusal to disclose information on discovery);
- (d) subrule 31.09(3) (failure to correct answers on discovery); or
- (e) subrule 53.03(2) (failure to serve expert's report),

leave shall be granted on such terms as are just and with an adjournment if necessary, unless to do so will cause prejudice to the opposite party or will cause undue delay in the conduct of the trial.

#### **DISCOUNT RATE FOR FUTURE PECUNIARY DAMAGES**

**53.09** The discount rate to be used in determining the amount of an award in respect of future pecuniary damages, to the extent that it reflects the difference between estimated investment and price inflation rates, is 2½ per cent per year.

## REFERENCES

### RULE 54 DIRECTING A REFERENCE

#### APPLICATION OF RULES 54 AND 55

**54.01** Rules 54 and 55 apply to references directed,

- (a) under rule 54.02 or any other rule; and
- (b) under a statute, subject to the provisions of the statute.

#### WHERE REFERENCE MAY BE DIRECTED

##### *Reference of Whole Proceeding or Issue*

**54.02** (1) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference of the whole proceeding or a reference to determine an issue where,

- (a) all affected parties consent;
- (b) a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial; or
- (c) a substantial issue in dispute requires the taking of accounts.

##### *Reference of Issue*

(2) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference to determine an issue relating to,

- (a) the taking of accounts;
- (b) the conduct of a sale;
- (c) the appointment of a committee, guardian or receiver;
- (d) the conduct of a committee, guardianship, or receivership; or
- (e) the enforcement of an order.

#### TO WHOM REFERENCE MAY BE DIRECTED

##### *Supreme Court*

**54.03** (1) In a Supreme Court proceeding, a reference may be directed to,

- (a) a local judge, master, local registrar or other officer;
- (b) a person agreed on by the parties; or
- (c) a family law commissioner, where the reference is directed under rule 70.22 or 71.06.

##### *District Court*

(2) In a District Court proceeding, a reference may be directed to the referring judge, a local registrar or a person agreed on by the parties.

##### *Person Agreed on by Parties*

(3) Where a reference is directed to a person agreed on by the parties, the person is, for the purposes of the reference, an officer of the court directing the reference.

(4) The judge directing a reference to a person agreed on by the parties may,

- (a) determine his or her remuneration and the liability of the parties for its payment;
- (b) refer that issue to the person to whom the reference is directed; or
- (c) reserve that issue until the report on the reference is confirmed.

### ORDER DIRECTING A REFERENCE

**54.04** (1) An order directing a reference shall specify the nature and subject matter of the reference and who is to conduct it and may,

- (a) direct in general terms that all necessary inquiries be made, accounts taken and costs assessed;
- (b) contain directions for the conduct of the reference; and
- (c) designate which party is to have carriage of the reference.

(2) An order of a master or registrar directing a reference shall not require a report back, and the report or an interim report on the reference shall be confirmed under rule 54.09 (confirmation by passage of time).

(3) A referee has, subject to the order directing the reference, all the powers these rules give to a referee.

### MOTIONS ON A REFERENCE

**54.05** (1) A referee shall hear and dispose of any motion made in connection with the reference, but in the absence of or with the consent of the referee, a motion may be heard and disposed of by a judge, local judge or master of the court in which the reference was directed.

(2) Rule 37.03 (place of hearing of motions) does not apply to a motion made in connection with a reference and heard by the referee.

(3) Where a referee has made an order on a motion in the reference, a person who is affected by the order may make a motion to a judge to set aside or vary the order by a notice of motion served within seven days after the order is made and naming the first available hearing date that is at least three days after service of the notice of motion.

### REPORT ON REFERENCE

**54.06** A referee shall make a report that contains his or her findings and conclusions.

### REPORT MUST BE CONFIRMED

**54.07** A report has no effect until it has been confirmed.

### CONFIRMATION ON MOTION WHERE REPORT BACK REQUIRED

**54.08** (1) Where the order directing a reference requires the referee to report back, the report or an interim report on the reference may be confirmed only on a motion to the judge who directed the reference, subject to subrule 70.22(3) (reference to family law commissioner), on notice to every party who appeared on the reference, and the judge may require the referee to give reasons for his or her findings and conclusions and may confirm the report in whole or in part or make such other order as is just.

(2) Where the judge who directed the reference is unable for any reason to hear a motion for confirmation, the motion may be made to another judge.

**CONFIRMATION BY PASSAGE OF TIME WHERE REPORT BACK NOT REQUIRED*****Fifteen Day Period to Oppose Confirmation***

**54.09** (1) Where the order directing a reference does not require the referee to report back, the report or an interim report on the reference is confirmed on the expiration of fifteen days after a copy, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced, unless a notice of motion to oppose confirmation of a report is served within that time.

***To Whom Motion to Oppose Confirmation Made***

(2) A motion to oppose confirmation of a report shall be made,

- (a) in a Supreme Court proceeding in which the reference was directed by a High Court judge, to a High Court judge;
- (b) in a Supreme Court proceeding in which the reference was directed by a local judge, to a local judge other than the one who conducted the reference;
- (c) in a Supreme Court proceeding in which the reference was directed by a master or registrar, to a High Court judge or local judge; or
- (d) in a District Court proceeding, to a judge other than the judge who conducted the reference.

***Notice of Motion to Oppose Confirmation***

(3) A notice of motion to oppose confirmation of a report shall,

- (a) set out the grounds for opposing confirmation;
- (b) be served within fifteen days after a copy of the report, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced; and
- (c) name the first available hearing date that is at least three days after service of the notice of motion.

***Motion for Immediate Confirmation***

(4) A party who seeks confirmation before the expiration of the fifteen day period prescribed in subrule (1) may make a motion to a judge for confirmation.

***Disposition of Motion***

(5) A judge hearing a motion under subrule (2) or (4) may require the referee to give reasons for his or her findings and conclusions and may confirm the report in whole or in part or make such other order as is just.

**REFEREE UNABLE TO CONTINUE OR COMPLETE REFERENCE**

**54.10** Where a referee is unable for any reason to continue or complete a reference, any party to the reference may make a motion to a judge for directions for continuation or completion of the reference.



**RULE 55 PROCEDURE ON A REFERENCE****GENERAL PROVISIONS FOR CONDUCT OF REFERENCE*****Simple Procedure to be Adopted***

**55.01** (1) A referee shall, subject to any directions contained in the order directing the reference, devise and adopt the simplest, least expensive and most expeditious manner of conducting the reference and may,

- (a) give such directions as are necessary; and
- (b) dispense with any procedure ordinarily taken that the referee considers to be unnecessary, or adopt a procedure different from that ordinarily taken.

***Special Circumstances to be Reported***

(2) A referee shall report on any special circumstances relating to the reference and shall generally inquire into, decide and report on all matters relating to the reference as fully as if they had been specifically referred.

***General Procedure***

(3) Subject to subrule (1), a reference shall be conducted as far as possible in accordance with rules 55.01 to 55.07.

**PROCEDURE ON A REFERENCE GENERALLY*****Hearing for Directions***

**55.02** (1) The party having carriage of the reference shall forthwith have the order directing the reference signed and entered and, within ten days after entry, request an appointment with the referee for a hearing to consider directions for the reference and, in default, any other party having an interest in the reference may assume carriage of it.

(2) A notice of hearing for directions (Form 55A) and a copy of the order directing the reference shall be served on every other party to the proceeding at least five days before the hearing unless the referee directs or these rules provide otherwise.

***Directions***

(3) At the hearing for directions, the referee shall give such directions for the conduct of the reference as are just, including,

- (a) the time and place at which the reference is to proceed;
- (b) any special directions concerning the parties who are to attend; and
- (c) any special directions concerning what evidence is to be received and how documents are to be proved.

(4) The directions may be varied or supplemented during the course of the reference.

***Adding Parties***

(5) Where it appears to the referee that any person ought to be added as a party to the proceeding, the referee may make an order adding the person as a defendant or respondent and direct that the order, together with the order directing the reference and a notice to party added on reference (Form 55B), be served on the person, and on being served the person becomes a party to the proceeding.

(6) A person served with a notice under subrule (5) may make a motion to a judge to set aside or vary the order directing the reference or the order adding the person as a party, by a notice of motion served within ten days after service of the notice under

subrule (5), or where the person is served outside Ontario, within such further time as the referee directs, and naming the first available hearing date that is at least three days after service of the notice of motion.

### ***Failure to Appear on Reference***

(7) A party who is served with notice of a reference under subrule (2) or (5) and does not appear in response to the notice is not entitled to notice of any step in the reference and need not be served with any document in the reference, unless the referee orders otherwise.

### ***Representation of Parties with Similar Interests***

(8) Where it appears to the referee that two or more parties have substantially similar interests and can be adequately represented as a class, the referee may require them to be represented by the same solicitor and, where they cannot agree on a solicitor to represent them, the referee may designate a solicitor on such terms as are just.

(9) Where one of the parties referred to in subrule (8) insists on being represented by a different solicitor, he or she shall not recover the costs of his or her separate representation and, unless the referee orders otherwise, shall pay all costs incurred by the other parties as a result of his or her separate representation.

### ***Amendment of Pleadings***

(10) The referee may grant leave to make any necessary amendments to the pleadings that are not inconsistent with the order of reference.

### ***Procedure Book***

(11) The referee shall keep a procedure book in which he or she shall note all steps taken and all directions given in respect of the reference, and the directions need not be embodied in a formal order or report to bind the parties.

### ***Transferring Carriage of Reference***

(12) Where the party having carriage of the reference does not proceed with reasonable diligence, the referee may, on the motion of any other interested party, transfer carriage of the reference to another party.

### ***Evidence of Witnesses***

(13) Witnesses on a reference shall be examined orally unless the referee directs otherwise, and evidence taken orally shall be recorded.

(14) The attendance of a person to be examined on a reference may be compelled in the same manner as provided in Rule 53 for a witness at a trial.

### ***Examination of Party and Production of Documents***

(15) The referee may require any party to be examined and to produce such documents as the referee thinks fit and may give directions for their inspection by any other party.

### ***Filing of Documents***

(16) While a reference is pending, all documents relating to it shall be filed with the referee and, on completion of the reference, the documents shall be returned to the office in which the proceeding was commenced.

***Execution or Delivery of Instrument***

(17) Where a person refuses or neglects to execute or deliver an instrument that becomes necessary under an order directing the reference, the referee may give directions for its execution or delivery.

***Rulings***

(18) Where the referee has made a ruling on the admissibility of evidence or any other matter relating to the conduct of the reference the referee shall, on the request of any party, set out the ruling and the reasons for it in the report or, in the discretion of the referee, in an interim report on the reference.

***Preparation of Report***

(19) When the hearing of the reference is completed, the referee shall fix a date to settle the report and the party having carriage of the reference shall serve notice of the date on all parties who appeared on the reference unless the referee dispenses with notice.

(20) The party having carriage of the reference shall prepare a draft report and present it to the referee on the day fixed for settling the report.

(21) When the referee has settled and signed the report, the party having carriage of the reference shall forthwith serve it on all parties who appeared on the reference and file a copy with proof of service.

(22) In a proceeding for the administration of the estate of a deceased person, the report shall, as far as possible, be in Form 55C.

**PROCEDURE TO ASCERTAIN INTERESTED PERSONS AND VERIFY CLAIMS*****Publication of Advertisements***

**55.03** (1) The referee may direct the publication of advertisements for creditors or beneficiaries of an estate or trust, other unascertained persons, or their successors.

***Filing of Claims***

(2) The advertisement shall specify a date by which and a place where interested persons may file their claims and shall notify them that, unless their claims are so filed, they may be excluded from the benefit of the order, but the referee may nevertheless accept a claim at a later time.

***Examination of Claims***

(3) Before the day specified by the referee for the consideration of claims filed in response to the advertisement, the executor, administrator or trustee, or such other person as the referee directs, shall examine the claims and prepare an affidavit verifying a list of the claims filed in response to the advertisement and stating which claims he or she believes should be disallowed and the reasons for that belief.

***Adjudication of Contested Claims***

(4) If a claim is contested, the referee shall order that a notice of contested claim (Form 55D), fixing a date for adjudication of the claim, be served on the claimant.

**PROCEDURE ON TAKING OF ACCOUNTS*****Powers of Referee***

**55.04** (1) On the taking of accounts, the referee may,



- (a) take the accounts with rests or otherwise;
- (b) take account of money received or that might have been received but for wilful neglect or default;
- (c) make allowance for occupation rent and determine the amount;
- (d) take into account necessary repairs, lasting improvements, costs and other expenses properly incurred; and
- (e) make all just allowances.

#### ***Preparation of Accounts***

(2) Where an account is to be taken, the party required to account, unless the referee directs otherwise, shall prepare the account in debit and credit form, verified by affidavit.

(3) The items on each side of the account shall be numbered consecutively, and the account shall be referred to in the affidavit as an exhibit and shall not be attached to the affidavit.

#### ***Books of Accounts as Proof***

(4) The referee may direct that the books in which the accounts have been kept be taken as *prima facie* proof of the matters contained in them.

#### ***Production of Vouchers***

(5) Before hearing a reference, the referee may fix a date for the purpose of taking the accounts and may direct the production and inspection of vouchers and, where appropriate, cross-examination of the party required to account on his or her affidavit, with a view to ascertaining what is admitted and what is contested between the parties.

#### ***Questioning Accounts***

(6) A party who questions an account shall give particulars of the objection, with specific reference by number to the item in question, to the party required to account, and the referee may require the party to give further particulars of the objection.

### **DIRECTION FOR PAYMENT OF MONEY**

#### ***Payment into Financial Institution***

**55.05** (1) Where under an order directing a reference the referee directs money to be paid at a specified time and place, the referee shall direct it to be paid into a financial institution to the credit of the party entitled or to the joint credit of the party entitled and the Accountant of the Supreme Court or local registrar.

#### ***Payment Out***

(2) Where money is directed to be paid out of court to the credit of the party entitled, the party may name the financial institution into which he or she wishes it to be paid.

(3) Where money has been paid to the joint credit of the party and the Accountant or registrar, the Accountant or registrar shall sign the cheque or direction for payment out on the production of the consent of the party paying in, verified by affidavit, or of the party's solicitor, or, in the absence of the consent, on the order of the referee.



***Money Belonging to Minor***

(4) Where it appears that money in court belongs to a minor, the referee shall require evidence of the age of the minor and shall, in the report, state the minor's birth date and full address.

***Money to be Paid to Creditors***

(5) Where an order of reference or a report directs the payment of money out of court to creditors, the person having carriage of the reference shall deposit with the Accountant or registrar a copy of the order or report and shall serve a notice to creditor (Form 55E) on each creditor stating that payment of the creditor's claim, as allowed, may be obtained from the Accountant or registrar.

**REFERENCE FOR CONDUCT OF SALE*****Method of Sale***

**55.06** (1) Where a sale is ordered, the referee may cause the property to be sold by public auction, private contract or tender, or partly by one method and partly by another.

***Advertisement***

(2) Where property is directed to be sold by auction or tender, the party having carriage of the sale shall prepare a draft advertisement according to the instructions of the referee showing,

- (a) the short title of the proceeding;
- (b) that the sale is by order of the court;
- (c) the time and place of the sale;
- (d) a short description of the property to be sold;
- (e) whether the property is to be sold in one lot or several and, if in several, in how many, and in what lots;
- (f) the terms of payment;
- (g) that the sale is subject to a reserve bid, if that is the case; and
- (h) any conditions of sale different from those set out in Form 55F.

***Conditions of Sale***

(3) The conditions of sale by auction or tender shall be those set out in Form 55F, subject to such modifications as the referee directs.

***Hearing for Directions***

- (4) At a hearing for directions under subrule 55.02(3), the referee shall,
- (a) settle the form of the advertisement;
  - (b) fix the time and place of sale;
  - (c) name an auctioneer, where one is to be employed;
  - (d) give directions for publication of the advertisement;
  - (e) give directions for obtaining appraisals;
  - (f) fix a reserve bid, if any; and
  - (g) make all other arrangements necessary for the sale.

***Who May Bid***

(5) All parties may bid except the party having carriage of the sale and any trustee or agent for the party or other person in a fiduciary relationship to the party.

(6) Where the party having carriage of the sale wishes to bid, the referee may transfer carriage of the sale to another party or to any other person.

***Who Conducts Sale***

(7) Where no auctioneer is employed, the referee or a person designated by the referee shall conduct the sale.

***Purchaser to Sign Agreement***

(8) The purchaser shall enter into an agreement of purchase and sale at the time of sale.

***Deposit***

(9) The deposit required by the conditions of sale shall be paid to the party having carriage of the sale or his or her solicitor at the time of sale and the party or solicitor shall forthwith pay the money into court in the name of the purchaser.

***Interim Report***

(10) Where a sale is made through an auctioneer, the auctioneer shall make an affidavit concerning the result of the sale, and where no auctioneer is employed, the referee shall enter the result in the procedure book and, in either case, the referee may make an interim report on the sale (Form 55G).

***Objection to Sale***

(11) A party may object to a sale by making a motion to the referee to set it aside, and notice of the motion shall be served on all parties to the reference and on the purchaser, who shall be deemed to be a party for the purpose of the motion.

***Completion of Sale***

(12) The purchaser may pay the purchase money or the balance of it into court without order and, after the confirmation of the report on the sale, on notice to the party having carriage of the sale, the purchaser may obtain a vesting order.

(13) Where possession is wrongfully withheld from the purchaser, either the purchaser or the party having carriage of the sale may move for a writ of possession.

(14) The purchase money may be paid out of court in accordance with the report,

(a) on consent of the purchaser or his or her solicitor; or

(b) on proof to the Accountant or registrar that the purchaser has received a transfer or vesting order of the property for which the money in question was paid into court.

(15) No transfer shall be approved until the referee is satisfied that the purchase money has been paid into court and, where a mortgage is taken for part of the purchase money, that the mortgage has been registered and deposited with the Accountant or registrar.

**REFERENCE TO APPOINT COMMITTEE, GUARDIAN OR RECEIVER**

**55.07** (1) Where, by an order directing a reference, a referee is directed to appoint a committee, guardian or receiver, the referee shall not report on the appointment until

he or she has settled and approved any security required by the order and until the security has been filed with the Accountant or registrar.

(2) Where, by an order directing a reference or a report, the person so appointed is required to pass accounts or to pay money into court and has not done so, the referee may, on the passing of accounts, disallow any compensation and may charge the person with interest.

## COSTS

### RULE 56 SECURITY FOR COSTS

#### WHERE AVAILABLE

**56.01** In an action where it appears that,

- (a) the plaintiff is ordinarily resident outside Ontario;
- (b) the plaintiff has another proceeding for the same relief pending in Ontario or elsewhere;
- (c) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part;
- (d) the plaintiff is a corporation or a nominal plaintiff, and there is good reason to believe that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant if ordered to do so;
- (e) there is good reason to believe that the action is frivolous and vexatious and that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant if ordered to do so; or
- (f) a statute entitles the defendant to security for costs,

the court on motion by the defendant may make such order for security for costs as is just.

#### DECLARATION OF PLAINTIFF'S PLACE OF RESIDENCE

**56.02** The plaintiff's solicitor shall, forthwith on receipt of a demand in writing from any person who has been served with the originating process, declare in writing whether the plaintiff is ordinarily resident in Ontario, and where the solicitor fails to respond to the demand, the court may order that the action be stayed or dismissed.

#### MOTION FOR SECURITY

**56.03** A motion for security for costs may be made only after the defendant has delivered a defence and shall be made on notice to the plaintiff and every other defendant who has delivered a defence or notice of intent to defend.

#### AMOUNT AND FORM OF SECURITY AND TIME FOR FURNISHING

**56.04** The amount and form of security and the time for paying into court or otherwise giving the required security shall be determined by the court.

#### FORM AND EFFECT OF ORDER

**56.05** A plaintiff against whom an order for security for costs (Form 56A) has been made may not, until the security has been given, take any step in the action except an appeal from the order, unless the court orders otherwise.

#### DEFAULT OF PLAINTIFF

**56.06** Where a plaintiff defaults in giving the security required by an order, the court on motion may dismiss the action against the defendant who obtained the order and the



stay imposed by rule 56.05 no longer applies unless another defendant has obtained an order for security for costs.

#### **AMOUNT MAY BE VARIED**

**56.07** The amount of security required by an order for security for costs may be increased or decreased at any time.

#### **NOTICE OF COMPLIANCE**

**56.08** On giving the security required by an order, the plaintiff shall forthwith give notice of compliance to the defendant who obtained the order and to every other party.

#### **SECURITY FOR COSTS AS TERM OF RELIEF**

**56.09** Notwithstanding rules 56.01 and 56.02, any party to a proceeding may be ordered to give security for costs where, under rule 1.05 or otherwise, the court has a discretion to impose terms as a condition of granting relief, and where such an order is made, rules 56.04 to 56.08 apply, with necessary modifications.

**RULE 57 COSTS OF PROCEEDINGS BETWEEN PARTY AND PARTY****GENERAL PRINCIPLES*****Factors in Discretion***

**57.01** (1) In exercising its discretion under section 141 of the *Courts of Justice Act, 1984* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle made in writing,

- (a) the amount claimed and the amount recovered in the proceeding;
- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
  - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different solicitor; and
- (i) any other matter relevant to the question of costs.

***Costs Against Successful Party***

(2) The fact that a party is successful in a proceeding does not prevent the court from awarding costs against the party in a proper case.

***Costs may be Fixed or Assessed***

(3) In awarding costs, the court may fix all or part of the costs with or without reference to the Tariffs, instead of referring them for assessment, and where the costs are not fixed, they may be assessed under Rule 58.

***Authority of Court***

(4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under section 141 of the *Courts of Justice Act, 1984*,

- (a) to award or refuse costs in respect of a particular issue or part of a proceeding;
- (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding; or
- (c) to award all or part of the costs on a solicitor and client basis.

**DIRECTIONS TO ASSESSMENT OFFICER**

**57.02** (1) Where costs are to be assessed, the court may give directions to the assessment officer in respect of any matter referred to in rule 57.01.

(2) The court shall record,

- (a) any direction to the assessment officer;
- (b) any direction that is requested by a party and refused; and
- (c) any direction that is requested by a party and that the court declines to make but leaves to the discretion of the assessment officer.

**COSTS OF A MOTION*****Contested Motion***

**57.03** (1) Where, on the hearing of a contested motion, the court is satisfied that the motion ought not to have been made or opposed, as the case may be, the court shall,

- (a) fix the costs of the motion and order them to be paid forthwith; or
- (b) order the costs of the motion to be paid forthwith after assessment.

(2) Where a party fails to pay the costs of a motion as required under subrule (1), the court may dismiss or stay the party's proceeding, strike out the party's defence or make such other order as is just.

***Motion Without Notice***

(3) On a motion made without notice, there shall be no costs to any party, unless the court orders otherwise.

**COSTS ON SETTLEMENT**

**57.04** Where a proceeding is settled on the basis that a party shall pay or recover costs and the amount of costs is not included in or determined by the settlement, the costs may be assessed under Rule 58 on the filing of a copy of the minutes of settlement in the office of the assessment officer.

**COSTS WHERE ACTION BROUGHT IN WRONG COURT*****Recovering within Monetary Jurisdiction of Lower Court***

**57.05** (1) Where in an action in the Supreme Court a plaintiff recovers an amount within the monetary jurisdiction of the District Court, or, in an action in the Supreme Court or District Court, a plaintiff recovers an amount within the monetary jurisdiction of the Provincial Court (Civil Division) where the action was commenced, the court may order that the plaintiff shall not recover any costs.

(2) Subrule (1) does not apply to an action transferred to the Supreme Court under section 33 or 121 of the *Courts of Justice Act, 1984*.

***Default Judgment within Monetary Jurisdiction of Provincial Court (Civil Division)***

(3) Where the plaintiff obtains a default judgment that is within the monetary jurisdiction of the Provincial Court (Civil Division) where the action was commenced, costs shall be assessed in accordance with the tariff of that court.

***Proceeding Dismissed for Want of Jurisdiction***

(4) Where a proceeding is dismissed for want of jurisdiction, the court may make an order for the costs of the proceeding.

**COSTS OF LITIGATION GUARDIAN**

**57.06** (1) The court may order a successful party to pay the costs of the litigation guardian of a party under disability who is a defendant or respondent, but may further order that the successful party pay those costs only to the extent that the successful party is able to recover them from the party liable for his or her costs.

(2) A litigation guardian who has been ordered to pay costs is entitled to recover them from the person under disability for whom he or she has acted, unless the court orders otherwise.

**LIABILITY OF SOLICITOR FOR COSTS**

**57.07** (1) Where a solicitor for a party has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the court may make an order,

- (a) disallowing costs between the solicitor and client or directing the solicitor to repay to the client money paid on account of costs;
- (b) directing the solicitor to reimburse the client for any costs that the client has been ordered to pay to any other party; and
- (c) requiring the solicitor personally to pay the costs of any party.

(2) An order under subrule (1) may be made by the court on its own initiative or on the motion of any party to the proceeding, but no such order shall be made unless the solicitor is given a reasonable opportunity to make representations to the court.

(3) The court may direct that notice of an order against a solicitor under subrule (1) be given to the client in the manner specified in the order.



**RULE 58 ASSESSMENT OF COSTS****GENERAL**

**58.01** Where a rule or order provides that a party is entitled to the costs of all or part of a proceeding between party and party and the costs have not been fixed by the court, they shall be assessed in accordance with rules 58.02 to 58.13.

**WHO MAY ASSESS COSTS***General Rule*

**58.02** (1) Costs shall be assessed by an assessment officer where the proceeding was commenced, where the proceeding was heard or in a county agreed on by the parties, subject to subrules (2) to (4).

*Supreme Court Costs may be Assessed at Toronto*

(2) In a Supreme Court proceeding, any party may require that costs be assessed by an assessment officer at Toronto under rule 58.03, 58.04 or 58.05.

*Appeal from Administrative Tribunal*

(3) The costs of an appeal or stated case from an administrative tribunal shall be assessed by an assessment officer at Toronto.

*Reference*

(4) The costs of a reference may be assessed by an assessment officer or by the referee, and for the purpose of rules 58.03 to 58.13, the referee shall be deemed to be an assessment officer.

**ASSESSMENT AT INSTANCE OF PARTY ENTITLED***By Filing Bill of Costs and Obtaining Appointment*

**58.03** (1) A party entitled to costs may obtain a notice of appointment for assessment of costs (Form 58A) from the appropriate assessment officer on filing a bill of costs and a copy of the order or other document giving rise to the party's entitlement to costs with the assessment officer.

(2) The notice and the bill of costs shall be served on every party interested in the assessment at least seven days before the date fixed for the assessment.

**ASSESSMENT AT INSTANCE OF PARTY LIABLE***By Obtaining Appointment and Serving Notice*

**58.04** (1) Where a party entitled to costs fails or refuses to file or serve a bill of costs for assessment within a reasonable time, any party liable to pay the costs may obtain a notice to deliver a bill of costs for assessment (Form 58B) from the appropriate assessment officer.

(2) The notice shall be served on every party interested in the assessment at least twenty-one days before the date fixed for the assessment.

*Delivery of Bill of Costs*

(3) On being served with the notice, the person required to deliver a bill of costs shall file and serve a copy of the bill on every party interested in the assessment at least seven days before the date fixed for the assessment.

***Failure to Deliver Bill of Costs***

(4) Where a party required to deliver a bill of costs for assessment fails to do so at the time set out in the notice and thereby prejudices another party, the assessment officer may fix the costs of the defaulting party at an appropriate sum in order to prevent further prejudice to the other party.

**MOVING ASSESSMENT TO TORONTO**

**58.05** Where, after a party has obtained an appointment for assessment of costs by an assessment officer outside Toronto, another party wishes to require that the costs be assessed by an assessment officer at Toronto, the other party shall,

- (a) serve a notice to that effect on every interested party, and file it with the assessment officer who gave the notice of appointment; and
- (b) obtain and serve a notice of appointment for assessment of costs from an assessment officer at Toronto on every interested party,

at least three days before the date fixed for the assessment outside Toronto.

**ASSESSMENT IN ACCORDANCE WITH TARIFFS*****Generally***

**58.06** (1) Where party and party costs are to be assessed, the assessment officer shall assess and allow,

- (a) solicitors' fees and disbursements in accordance with the Tariffs; and
- (b) disbursements for fees paid to the court, a court reporter, an official examiner or a sheriff under the regulations under the *Administration of Justice Act*,

and no other fees, disbursements or charges shall be assessed or allowed unless the court orders otherwise.

***Students-at-Law and Law Clerks***

(2) Where students-at-law or law clerks have rendered services of a nature that the Law Society of Upper Canada authorizes them to render, the fees for those services shall be assessed and allowed at one-half of the amount that would have been allowed under the Tariffs for a solicitor.

***Disbursements***

(3) No disbursements other than fees paid to the court shall be assessed or allowed unless it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or that the party is liable for it.

***Directions***

(4) An assessment officer may direct production of books and documents and give directions for the conduct of an assessment.

***Set Off of Costs***

(5) Where parties are liable to pay costs to each other, the assessment officer may adjust the costs by way of set off.

***Costs of Assessment***

(6) The assessment officer may, in his or her discretion, award or refuse the costs of an assessment to either party, and fix those costs.

**FACTORS TO BE CONSIDERED ON ASSESSMENT**

**58.07** (1) In assessing costs the assessment officer may consider,

- (a) the amount involved in the proceeding;
- (b) the complexity of the proceeding;
- (c) the importance of the issues;
- (d) the duration of the hearing;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted; and
- (h) any other matter relevant to the assessment of costs.

(2) In assessing costs the assessment officer is bound by the court's direction or refusal to make a direction under rule 57.02, but is not bound where the court declines to make a direction and leaves the matter to the assessment officer's discretion.

**COSTS OF ABANDONED MOTION, APPLICATION OR APPEAL**

**58.08** The costs of a motion, application or appeal that is abandoned or deemed to be abandoned may be assessed on filing in the office of the assessment officer,

- (a) the notice of motion or application served, together with an affidavit that the notice was not filed within the prescribed time or that the moving party or applicant did not appear at the hearing; or
- (b) the notice of abandonment served.

**COSTS OF PARTICULAR PROCEEDINGS*****Passing of Accounts***

**58.09** (1) The costs of passing the accounts of a trustee or committee shall be fixed in accordance with the tariff for the passing of accounts in a surrogate court, subject to increase where the tariff appears to be inadequate.

***Costs out of Fund or Estate***

(2) Where costs are to be paid out of a fund or estate, the assessment officer may direct what parties are to attend on the assessment and may disallow the costs of the assessment of any party whose attendance is unnecessary because the interest of the party in the fund or estate is small, remote or sufficiently protected by other interested parties.

**CERTIFICATE OF ASSESSMENT**

**58.10** On the assessment of party and party costs, the assessment officer shall set out in a certificate of assessment of costs (Form 58C) the amount of costs assessed and allowed.



## OBJECTIONS TO ASSESSMENT

**58.11** (1) On request, the assessment officer shall withhold the certificate for seven days or such other time as he or she directs, in order to allow a party who is dissatisfied with the decision of the assessment officer to serve objections on every other interested party and file them with the assessment officer, specifying concisely the grounds for the objections.

(2) A party on whom objections have been served may, within seven days after service or such other time as the assessment officer directs, serve a reply to the objections on every other interested party and file it with the assessment officer.

(3) The assessment officer shall then reconsider and review the assessment in view of the objections and reply and may receive further evidence in respect of the objections, and the assessment officer shall decide on the objections and complete the certificate accordingly.

(4) The assessment officer may, and if requested shall, state in writing the reasons for his or her decision on the objections.

## APPEAL FROM ASSESSMENT

**58.12** The time for and the procedure on an appeal under subsection 13(2), 36(5) or 104(4) of the *Courts of Justice Act, 1984* from a certificate of an assessment officer on an issue in respect of which an objection was served is governed by rule 62.01.

## COSTS OF A SHERIFF

### *Party may Require Assessment*

**58.13** (1) A sheriff claiming fees or expenses that are not prescribed by the regulations under the *Administration of Justice Act* or that have not been assessed shall, on being required by a party, furnish the party with a bill of costs and have the costs assessed by an assessment officer.

(2) A sheriff who has been required to have his or her fees or expenses assessed shall not collect them until they have been assessed.

(3) Either the sheriff or the party requiring the assessment may obtain an appointment for the assessment and the procedure on the assessment shall be the same as in the case of an assessment between party and party.

### *Reduction of Fees on Motion by Debtor*

(4) A person liable under a writ of execution who is dissatisfied with the amount of fees or expenses claimed by a sheriff in respect of the enforcement of the writ may make a motion, before or after payment, on notice to the sheriff and, if the amount appears to be unreasonable, even though it is in accordance with Tariff A, the court may reduce the amount or order the amount to be refunded on such terms as are just.

(5) Nothing in subrule (4) authorizes the court to reduce or order a refund of a fee that is prescribed by the regulations under the *Administration of Justice Act*.



**ORDERS****RULE 59 ORDERS****EFFECTIVE DATE**

**59.01** An order is effective from the date on which it is made, unless it provides otherwise.

**ENDORSEMENT BY JUDGE OR OFFICER**

**59.02** (1) An endorsement of every order shall be made on the appeal book, record, notice of motion or notice of application by the court, judge or officer making it, unless the circumstances make it impractical to do so.

(2) Where written reasons are delivered,

(a) in an appellate court, an endorsement is not required;

(b) in any other court, the endorsement may consist of a reference to the reasons, and a copy of the reasons shall be filed in the court file.

**PREPARATION AND FORM OF ORDER*****Preparation of Draft Formal Order***

**59.03** (1) Any party affected by an order may prepare a draft of the formal order and send it to all other parties represented at the hearing for approval of its form.

(2) Approval of the form of an order that merely dismisses a motion, proceeding or appeal, with or without costs, is not required.

***General Form of Order***

(3) An order shall be in Form 59A (order) or 59B (judgment) and shall contain,

(a) the name of the judge or officer who made it;

(b) the date on which it was made; and

(c) a recital of the particulars necessary to understand the order, including the date of the hearing, the parties who were present or represented by counsel and those who were not, and any undertaking made by a party as a condition of the order.

(4) The operative parts of an order shall be divided into paragraphs, numbered consecutively.

***Order Directing Payment for Minor***

(5) An order directing payment into court or to a trustee on behalf of a minor shall show the minor's birth date and full address and shall direct that a copy of the order be served on the Official Guardian.

***Order for Costs***

(6) An order for the payment of costs shall direct payment to the party entitled to receive the costs and not to his or her solicitor.

***Order on which Interest Payable***

(7) An order for the payment of money on which postjudgment interest is payable shall set out the rate of interest and the date from which interest is payable.

**SIGNING ORDERS*****General***

**59.04** (1) Every order shall be submitted in accordance with subrules (4) to (8) for the signature of,

- (a) in the case of an order of the Court of Appeal or Divisional Court, the Registrar of the court; or
- (b) in any other case, the registrar at the place of hearing or where the proceeding was commenced,

unless the court, judge or officer who made the order has signed it.

(2) Where an order states that it may be signed only on the filing of an affidavit or the production of a document, the registrar shall examine the affidavit or document and ascertain that it is regular and sufficient before signing the order.

(3) Where a judge or master ceases to hold office or becomes incapacitated after making an order but before the order is signed, the order may be settled and signed,

- (a) where the order was made by a High Court judge, by any other High Court judge;
- (b) where the order was made by a local judge, by any other local judge or a High Court judge;
- (c) where the order was made by a District Court judge, by any other District Court judge; or
- (d) where the order was made by a master, by any other master or a local judge.

***Signing Where Form of Draft Order Approved***

(4) Where all the parties represented at the hearing have approved the form of the order, the party who prepared the draft order shall,

- (a) file the approval of all the parties represented at the hearing, together with a copy of the order; and
- (b) leave the order with the registrar for signing.

***Signing Where Approval of Form Not Required***

(5) Where approval of the form of an order is not required under subrule 59.03(2), the party who prepared the draft order shall leave it with the registrar for signing.

***Where Registrar Satisfied***

(6) Where the registrar is satisfied that the order is in proper form, he or she shall sign the order and return it to the party who left it to be signed.

***Where Registrar not Satisfied***

(7) Where the registrar is not satisfied that the order is in proper form, he or she shall return the order unsigned to the party who left it to be signed and the party may,

- (a) submit the order in proper form and, if required by the registrar, file the approval of the parties to the order in that form, together with a copy of the order; or
- (b) obtain an appointment to have the order settled by the court, judge or officer that made it and serve notice of the appointment on all other parties who were represented at the hearing.

***Appointment to Settle Where Form of Draft Order not Approved***

(8) Where approval is not received within a reasonable time, a party may obtain an appointment to have the order settled by the registrar or, where the registrar considers it necessary, by the court, judge or officer that made it, and notice of the appointment shall be served on all other parties who were represented at the hearing.

***Urgent Cases***

(9) In a case of urgency, the order may be settled and signed by the court, judge or officer that made it without the approval of any of the parties who were represented at the hearing.

***Appointment to Settle Disputed Order before Judge or Officer***

(10) Where an objection is taken to the proposed form of the order in the course of its settlement before a registrar, the registrar shall settle the order in the form he or she considers proper and the objecting party may obtain an appointment with the court, judge or officer that made the order to settle the part of the order to which objection has been taken and serve notice of the appointment on all other parties who were represented at the hearing.

(11) Where the order was made by a court that consisted of more than one judge, the appointment shall be with the judge who presided at the hearing or, where he or she is unavailable, any other judge who was present at the hearing.

(12) The judge with whom an appointment is obtained under subrule (11) may refer the settling of the order to the full court that made the order.

(13) Where an appointment is not obtained under subrule (10) or (11) within seven days after the registrar settles the order, a party may require the registrar to sign the order as settled by him or her.

(14) After an order has been settled under subrule (10) by the judge or officer who made it, or under subrule (11) or (12), the registrar shall sign it unless it was signed by a judge or officer at the time it was settled.

**ENTRY OF ORDER**

***Every Order to be Entered and Filed***

**59.05** (1) Every order shall be entered in accordance with subrules (2) to (6) immediately after it is signed and the party having the order signed shall give to the registrar the original and a sufficient number of copies for the purpose of entering and filing it.

(2) The registrar shall enter an order by,

- (a) noting at the foot of the original the entry book in which a copy is to be inserted or the microfilm on which the original is to be photographed, together with the date of the insertion or photograph; and
- (b) inserting a copy in an entry book or microfilming the original.

***Where Order to be Entered and Filed***

(3) Every order shall be entered in the office of the registrar in which the action or application was commenced and a copy of the order as entered shall be filed in the court file.

(4) Where an order in a subsequent action or application affirms, reverses, sets aside, varies or amends an earlier order, it shall be entered not only in the office described in subrule (3) but also in the office in which the earlier order was entered.

(5) An order of an appellate court shall be entered not only in the office described in subrule (3) but also in the office of the local registrar at Toronto.

(6) The certificate of the Registrar of the Supreme Court of Canada in respect of an order made on an appeal to that court shall be entered by the local registrar at Toronto and by the registrar in the office where the action or application was commenced, and all subsequent steps may be taken as if the order had been made in the court from which the appeal was taken.

**AMENDING, SETTING ASIDE OR VARYING ORDER*****Amending***

**59.06** (1) An order that,

- (a) contains an error arising from an accidental slip or omission; or
- (b) requires amendment in any particular on which the court did not adjudicate,

may be amended on a motion in the proceeding.

***Setting Aside or Varying***

(2) A party who seeks to,

- (a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;
- (b) suspend the operation of an order;
- (c) carry an order into operation; or
- (d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed.

**SATISFACTION OF ORDER**

**59.07** A party may acknowledge satisfaction of an order in a document signed by the party before a witness, and the document may be filed and entered in the court office where the order was entered.



**RULE 60 ENFORCEMENT OF ORDERS****DEFINITIONS**

**60.01** In rules 60.02 to 60.17,

- (a) “creditor” means a person who is entitled to enforce an order for the payment or recovery of money;
- (b) “debtor” means a person against whom an order for the payment or recovery of money may be enforced.

**ENFORCEMENT OF ORDER FOR PAYMENT OR RECOVERY OF MONEY*****General***

**60.02** (1) In addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by,

- (a) a writ of seizure and sale (Form 60A) under rule 60.07;
- (b) garnishment under rule 60.08;
- (c) a writ of sequestration (Form 60B) under rule 60.09; and
- (d) the appointment of a receiver.

***Recovery of Costs without Order Awarding Costs***

(2) Where under these rules a party is entitled to costs on the basis of a certificate of assessment of costs without an order awarding costs, and the costs are not paid within seven days after the certificate of assessment of costs is signed, the party may enforce payment of the costs by the means set out in subrule (1) on filing with the registrar an affidavit setting out the basis of entitlement to costs and attaching a copy of the certificate of assessment.

**ENFORCEMENT OF ORDER FOR POSSESSION OF LAND**

**60.03** An order for the recovery or delivery of the possession of land may be enforced by a writ of possession (Form 60C) under rule 60.10.

**ENFORCEMENT OF ORDER FOR DELIVERY OF PERSONAL PROPERTY**

**60.04** (1) An order for the delivery of personal property other than money may be enforced by a writ of delivery (Form 60D), which may be obtained on filing with the registrar a requisition together with a copy of the order as entered.

(2) Where the property is not delivered up under a writ of delivery, the order may be enforced by a writ of sequestration (Form 60B) under rule 60.09.

**ENFORCEMENT OF ORDER TO DO OR ABSTAIN FROM DOING ANY ACT**

**60.05** An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by a contempt order under rule 60.11.

**ENFORCEMENT BY OR AGAINST A PERSON NOT A PARTY**

**60.06** (1) An order that is made for the benefit of a person who is not a party may be enforced by that person in the same manner as if he or she were a party.

(2) An order that may be enforced against a person who is not a party may be enforced against that person in the same manner as if he or she were a party.

## **WRIT OF SEIZURE AND SALE**

### ***Where Available Without Leave***

**60.07** (1) Where an order may be enforced by a writ of seizure and sale, the creditor is entitled to the issue of one or more writs of seizure and sale (Form 60A), on filing with the registrar a requisition setting out,

- (a) the date and amount of any payment received since the order was made; and
- (b) the amount owing and the rate of postjudgment interest,

together with a copy of the order as entered and any other evidence necessary to establish the amount awarded and the creditor's entitlement.

### ***Where Leave is Required***

(2) A writ of seizure and sale shall not issue for the enforcement of an order for the payment or recovery of money unless leave of the court is first obtained where,

- (a) six years or more have elapsed since the date of the order; or
- (b) the enforcement of the order is subject to the fulfilment of a term or condition.

(3) Where the court grants leave to issue a writ of seizure and sale and it is not issued within one year from the date of the order granting leave, the order granting leave ceases to have effect, but this does not prevent the granting of leave on a subsequent motion.

### ***Order for Payment into Court***

(4) Where an order is for the payment of money into court, the writ of seizure and sale shall contain a notice that all money realized by the sheriff under the writ is to be paid into court.

### ***Order for Payment at Future Time***

(5) Where an order is for payment at or after a specified future time, the writ of seizure and sale shall not be issued until after the expiration of that time.

### ***Duration and Renewal***

(6) A writ of seizure and sale remains in force for six years from the date of its issue and for a further six years from each renewal.

(7) Where a writ of seizure and sale is filed with a sheriff, the sheriff shall, not less than thirty days nor more than sixty days before expiration of the writ, mail a notice of its expiration to the creditor, at the address shown on the writ or the most recent request to renew it.

(8) A writ of seizure and sale that is filed with a sheriff may be renewed before its expiration by filing a request to renew (Form 60E) with the sheriff, and the sheriff shall endorse on the writ a memorandum stating the date of its renewal.

(9) A writ of seizure and sale that is not filed with a sheriff may be renewed before its expiration by filing with the registrar who issued it a requisition to renew the writ and the registrar shall endorse on the writ a memorandum stating the date of its renewal.

***Change of Debtor's Name***

(10) Where the name of a debtor named in a writ of seizure and sale is changed after the writ is issued, the creditor may file an affidavit with the sheriff setting out the change, and the sheriff shall,

- (a) amend the writ by adding the new name of the debtor following the words "now known as";
- (b) amend the index of writs to show the new name; and
- (c) where a copy of the writ has been sent to the land registrar for filing under the *Land Titles Act*, send a copy of the amended writ to the land registrar.

***Writ to Bear Creditor's Address***

(11) Every writ of seizure and sale shall bear the name and address of the creditor and his or her solicitor, if any.

***Direction to Enforce***

(12) A creditor who has filed a writ of seizure and sale with a sheriff may file with the sheriff a direction to enforce (Form 60F) setting out,

- (a) the date of the order and the amount awarded;
- (b) the rate of postjudgment interest payable;
- (c) the costs of enforcement to which the creditor is entitled under rule 60.19;
- (d) the date and amount of any payment received since the order was made; and
- (e) the amount owing, including postjudgment interest,

and directing the sheriff to enforce the writ for the amount owing, subsequent interest and the sheriff's fees and expenses.

***Property in Hands of Receiver***

(13) A writ of seizure and sale shall not be enforced against property in the hands of a receiver appointed by a court.

***Seizure of Personal Property***

(14) Where personal property is seized under a writ of seizure and sale, the sheriff shall, on request, deliver an inventory of the property seized to the debtor or the debtor's agent or employee before or, where this is not practicable, within a reasonable time after the property is removed from the premises on which it was seized.

***Sale of Personal Property***

(15) Personal property seized under a writ of seizure and sale shall not be sold by the sheriff unless notice of the time and place of the sale has been,

- (a) mailed to the creditor at the address shown on the writ or the creditor's solicitor and to the debtor at his or her last known address, at least ten days before the sale; and
- (b) published in a newspaper of general circulation in the place where the property was seized.

***Sale of Land***

(16) A creditor may not take any step to sell land under a writ of seizure and sale until four months after the writ was filed with the sheriff or, where the writ has been withdrawn, four months after the writ was re-filed.



(17) No sale of land under a writ of seizure and sale may be held until six months after the writ was filed with the sheriff or, where the writ has been withdrawn, six months after the writ was re-filed.

(18) A sale of land shall not be held under a writ of seizure and sale unless notice of the time and place of sale has been,

- (a) mailed to the creditor at the address shown on the writ or to the creditor's solicitor and to the debtor at his or her last known address, at least thirty days before the sale;
- (b) published in *The Ontario Gazette* once at least thirty days before the sale and in a newspaper of general circulation in the place where the land is situate, once each week for two successive weeks, the last notice to be published not less than one week nor more than three weeks before the date of sale; and
- (c) posted in a conspicuous place in the sheriff's office for at least thirty days before the sale.

(19) The notice shall set out,

- (a) a short description of the property to be sold;
- (b) the short title of the proceeding;
- (c) the time and place of the intended sale; and
- (d) the name of the debtor whose interest is to be sold.

(20) The sheriff may adjourn a sale to a later date where the sheriff considers it necessary in order to realize the best price that can be obtained in all the circumstances, and where the sale is adjourned, it may be conducted on the later date with such further notice, if any, as the sheriff considers advisable.

(21) Where notice of a sale of land under a writ of seizure and sale is published in *The Ontario Gazette* before the writ expires, the sale may be completed by a sale and transfer of the land after the writ expires.

#### ***Abortive Sale***

(22) Where personal property or land seized under a writ of seizure and sale remains unsold for want of buyers, the sheriff shall notify the creditor of the date and place of the attempted sale and of any other relevant circumstances.

(23) On receipt of a notice under subrule (22), the creditor may instruct the sheriff in writing to sell the personal property or land in such manner as the sheriff considers will realize the best price that can be obtained.

### **GARNISHMENT**

#### ***Where Available***

**60.08** (1) A creditor under an order for the payment or recovery of money may enforce it by garnishment of debts payable to the debtor by other persons.

#### ***Obtaining Notice of Garnishment***

(2) A creditor under an order for the payment or recovery of money who seeks to enforce it by garnishment shall file with the registrar where the proceeding was commenced a requisition for garnishment together with a copy of the order as entered, any other evidence necessary to establish the amount awarded and the creditor's entitlement, and an affidavit stating,



- (a) the date and amount of any payment received since the order was made;
- (b) the amount owing, including postjudgment interest;
- (c) the name and address of each person to whom a notice of garnishment is to be directed;
- (d) that the creditor believes that those persons are or will become indebted to the debtor and the grounds for the belief;
- (e) such particulars of the debts as are known to the creditor;
- (f) where a person to whom a notice of garnishment is to be directed is not in Ontario, that the debtor is entitled to sue that person in Ontario to recover the debt, and the basis of entitlement to sue in Ontario; and
- (g) where a person to whom a notice of garnishment is to be directed is not then indebted but will become indebted to the debtor, such particulars of the date on and the circumstances under which the debt will arise as are known to the creditor.

(3) On the filing of the requisition and affidavit required by subrule (2), the registrar shall issue notices of garnishment (Form 60G) naming as garnishees the persons named in the affidavit and shall send a copy of each notice of garnishment to the sheriff of the county where the proceeding was commenced.

#### ***Service of Notice of Garnishment***

(4) The creditor shall serve the notice of garnishment, with a blank garnishee's statement (Form 60H) attached, on the debtor and the garnishee,

- (a) by ordinary mail; or
- (b) by personal service or an alternative to personal service under rule 16.03.

(5) A notice of garnishment may be served outside Ontario where the debtor would be entitled to sue the garnishee in Ontario to recover the debt.

(6) Where the garnishee is a bank, trust company, loan corporation, credit union, caisse populaire or the Province of Ontario Savings Office, the garnishee shall be served at the branch at which the debt is payable.

#### ***Garnishee Liable from Time of Service***

(7) The garnishee is liable to pay to the sheriff any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within ten days after service on the garnishee or ten days after the debt becomes payable, whichever is later.

(8) For the purposes of subrule (7), a debt of the garnishee to the debtor includes a debt payable at the time the notice of garnishment is served and a debt,

- (a) payable within six years after the notice is served; or
- (b) payable on the fulfilment of a term or condition within six years after the notice is served.

#### ***Payment by Garnishee to Sheriff***

(9) A garnishee who admits owing a debt to the debtor shall pay it to the sheriff in the manner prescribed by the notice of garnishment, subject to section 7 of the *Wages Act*.

***Garnishee Must Serve Statement to Dispute Garnishment***

(10) A garnishee who wishes for any reason to dispute the garnishment or who pays to the sheriff less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor shall, within ten days after service of the notice of garnishment, serve on the creditor and the debtor and file with the court a garnishee's statement (Form 60H) setting out the particulars.

***Garnishment Hearing***

(11) On motion by a creditor, debtor, garnishee or any other interested person, the court may,

- (a) where it is alleged that the debt of the garnishee to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of his or her claim;
- (b) determine the rights and liabilities of the garnishee, the debtor and any assignee or encumbrancer;
- (c) vary or suspend periodic payments under a notice of garnishment; or
- (d) determine any other matter in relation to a notice of garnishment,

and the court may proceed in a summary manner, but where the motion is made to a master and raises a genuine issue of fact or of law, the motion shall be adjourned to be heard by a judge.

***Enforcement against Garnishee***

(12) Where the garnishee does not pay to the sheriff the amount set out in the notice of garnishment as owing by the garnishee to the debtor and does not serve and file a garnishee's statement, the creditor is entitled on motion to the court, on notice to the garnishee, to an order against the garnishee for payment of the amount that the court finds is payable to the debtor by the garnishee, or the amount set out in the notice, whichever is less.

***Payment by Garnishee to Person other than Sheriff***

(13) Where, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the sheriff, the garnishee remains liable to pay the debt in accordance with the notice.

***Payment to Sheriff Discharges Garnishee***

(14) Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt, as between the garnishee and the debtor, to the extent of the payment.

***Creditor to Give Notice when Order Satisfied***

(15) When the amount owing under an order that is enforced by garnishment has been paid, the creditor shall forthwith serve a notice of termination of garnishment (Form 60I) on the garnishee and on the sheriff.

**WRIT OF SEQUESTRATION*****Leave Required***

**60.09** (1) A writ of sequestration (Form 60B), directing a sheriff to take possession of and hold the property of a person against whom an order has been made and to collect and hold any income from the property until the person complies with the order, may be issued only with leave of the court, obtained on motion.

(2) The court may grant leave to issue a writ of sequestration only where it is satisfied that other enforcement measures are or are likely to be ineffective.

(3) In granting leave to issue a writ of sequestration, the court may order that the writ be enforced against all or part of the person's real and personal property.

#### ***Variation or Discharge***

(4) The court on motion may discharge or vary a writ of sequestration on such terms as are just.

### **WRIT OF POSSESSION**

#### ***Leave Required***

**60.10** (1) A writ of possession (Form 60C) may be issued only with leave of the court, obtained on motion without notice or at the time an order entitling a party to possession is made.

(2) The court may grant leave to issue a writ of possession only where it is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief.

#### ***Duration***

(3) A writ of possession remains in force for one year from the date of the order authorizing its issue, and may, before its expiry, be renewed by order for a period of one year from each renewal.

### **CONTEMPT ORDER**

#### ***Motion for Contempt Order***

**60.11** (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.

(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

#### ***Warrant for Arrest***

(4) A judge may issue a warrant (Form 60J) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

#### ***Content of Order***

(5) In disposing of a motion under subrule (1) the judge may make such order as is just, and where a finding of contempt is made, the judge may, subject to subsection 35(2) of the *Courts of Justice Act, 1984* (District Court contempt powers), order that the person in contempt,

(a) be imprisoned for such period and on such terms as are just;



- (b) be imprisoned if he or she fails to comply with a term of the order;
- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and
- (f) comply with any other order that the judge considers necessary,

and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

#### ***Where Corporation is in Contempt***

(6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property.

#### ***Warrant of Committal***

(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60K).

#### ***Discharging or Setting Aside Contempt Order***

(8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just.

#### ***Order that Act be done by Another Person***

(9) Where a person fails to comply with an order requiring him or her to do an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.

(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.

### **FAILURE TO COMPLY WITH INTERLOCUTORY ORDER**

**60.12** Where a party fails to comply with an interlocutory order, the court may, in addition to any other sanction provided by these rules,

- (a) stay the party's proceeding;
- (b) dismiss the party's proceeding or strike out the party's defence; or
- (c) make such other order as is just.

### **DISPUTE OF OWNERSHIP OF PROPERTY SEIZED BY SHERIFF**

**60.13** (1) A person who makes a claim in respect of property or the proceeds of property taken or intended to be taken by a sheriff in the execution of any enforcement process against another person shall give notice to the sheriff of the claim and his or her address for service.

(2) On receiving a claim, the sheriff shall forthwith give notice of claim (Form 60L) to every creditor of the debtor who has filed an enforcement process with the sheriff, by mail addressed to the creditor at the address shown on the enforcement process, and the



creditor shall within seven days after receiving the notice give the sheriff notice in writing stating whether he or she admits or disputes the claim.

(3) Where the sheriff,

- (a) receives a notice admitting the claim from every creditor; or
- (b) receives a notice admitting the claim from the creditor at whose direction the sheriff took or intended to take the property and does not receive a notice disputing the claim from any other creditor,

he or she shall release the property in respect of which the claim is admitted.

(4) On receiving a notice disputing a claim, or on the failure of the creditor at whose direction the sheriff took or intended to take the property to give the required notice within the time prescribed by subrule (2), the sheriff may make a motion or application under rule 43.05 for an interpleader order.

### **SHERIFF'S REPORT ON EXECUTION OF WRIT**

**60.14** (1) A party or solicitor who has filed a writ with a sheriff may in writing require the sheriff to report the manner in which he or she has executed the writ and the sheriff shall do so forthwith by mailing to the party or solicitor a sheriff's report (Form 60M).

(2) Where the sheriff fails to comply with a request made under subrule (1) within a reasonable time, the party serving the request may move before a judge for an order directing the sheriff to comply with the request.

### **REMOVAL OF WRIT FROM SHERIFF'S FILE**

#### ***Executed and Expired Writs***

**60.15** (1) When a writ has been fully executed or has expired, the sheriff shall endorse a memorandum to that effect on the writ, remove it from his or her file and retain it in a separate file of executed and expired writs.

#### ***Withdrawal of Writ***

(2) A party or solicitor who has filed a writ with a sheriff may withdraw it by giving the sheriff written instructions to withdraw it.

(3) When a writ is withdrawn, the sheriff shall record the date and time of the withdrawal in a memorandum on the writ, remove the writ from his or her file and return it to the person who withdrew it.

### **DUTY OF PERSON FILING WRIT WITH SHERIFF**

**60.16** (1) Where a writ of seizure and sale has been filed with a sheriff and any payment has been received by or on behalf of the creditor, the creditor shall forthwith give the sheriff notice of the payment.

(2) Where an order has been satisfied in full, the creditor shall withdraw all writs of execution relating to the order from the office of any sheriff with whom they have been filed.

(3) Where the creditor fails to withdraw a writ as required by subrule (2), the court on motion by the debtor may order that the writ be withdrawn.

**MOTION FOR DIRECTIONS**

**60.17** Where a question arises in relation to the measures to be taken by a sheriff in carrying out an order, writ of execution or notice of garnishment, the sheriff or any interested person may make a motion for directions,

- (a) to the judge or officer who made the original order, at any place;
- (b) to a judge or officer who had jurisdiction to make the original order, in the sheriff's county, notwithstanding rule 37.03 (place of hearing of motions); or
- (c) where an appeal has been taken from the original order, to a judge of the court to which the appeal has been taken, at any place.

**EXAMINATION IN AID OF EXECUTION*****Definitions***

**60.18** (1) In subrules (2) to (6),

- (a) "creditor" includes a person entitled to obtain or enforce a writ of possession, delivery or sequestration;
- (b) "debtor" includes a person against whom a writ of possession, delivery or sequestration may be or has been issued.

***Examination of Debtor***

(2) A creditor may examine the debtor in relation to,

- (a) the reason for nonpayment or nonperformance of the order;
- (b) the debtor's income and property;
- (c) the debts owed to and by the debtor;
- (d) the disposal the debtor has made of any property either before or after the making of the order;
- (e) the debtor's present, past and future means to satisfy the order;
- (f) whether the debtor intends to obey the order or has any reason for not doing so; and
- (g) any other matter pertinent to the enforcement of the order.

(3) An officer or director of a corporate debtor, or, in the case of a debtor that is a partnership or sole proprietorship, a partner or sole proprietor against whom the order may be enforced, may be examined on behalf of the debtor in relation to the matters set out in subrule (2).

(4) Only one examination under subrule (2) or (3) may be held in a twelve month period in respect of a debtor in the same proceeding, unless the court orders otherwise.

(5) Where it appears from an examination under subrules (2) to (4) that a debtor has concealed or made away with property to defeat or defraud his or her creditors, a judge may make a contempt order against the debtor.

***Examination of Person other than Debtor***

(6) Where any difficulty arises concerning the enforcement of an order, the court may,

- (a) make an order for the examination of any person who the court is satisfied may have knowledge of the matters set out in subrule (2); and

- (b) make such order for the examination of any other person as is just.

### **COSTS OF ENFORCEMENT**

**60.19** (1) A party who is entitled to enforce an order is entitled to the costs of an examination in aid of execution and the issuing, service, enforcement and renewal of a writ of execution and notice of garnishment, unless the court orders otherwise.

(2) A party entitled to costs under subrule (1) may include in or collect under a writ of execution or notice of garnishment,

- (a) the amounts prescribed in the regulations under the *Administration of Justice Act* and in Tariff A for issuing, renewing and filing with the sheriff the writ of execution or notice of garnishment;
- (b) disbursements paid to a sheriff, registrar, official examiner, court reporter or other public officer and to which the party is entitled under subrule (1), on filing with the sheriff or registrar a copy of a receipt for each disbursement;
- (c) the minimum amount prescribed in Tariff A for conducting an examination in aid of execution, on filing with the sheriff or registrar an affidavit stating that the examination was conducted; and
- (d) any other costs to which the party is entitled under subrule (1), on filing with the sheriff or registrar a certificate of assessment of the costs.

## APPEALS

### RULE 61 APPEALS TO AN APPELLATE COURT

#### APPLICATION OF THE RULE

**61.01** Rules 61.02 to 61.15 apply to all appeals to an appellate court and, with necessary modifications, to proceedings in an appellate court by way of,

- (a) stated case under a statute;
- (b) special case under rule 22.03, subject to any directions given under subrule 22.03(2); and
- (c) reference under section 19 of the *Courts of Justice Act, 1984*.

#### DEFINITION

**61.02** In rules 61.03 to 61.15, “Registrar” means the Registrar of the Court of Appeal or Divisional Court, as the context requires.

#### MOTION FOR LEAVE TO APPEAL

##### *Notice of Motion for Leave*

**61.03** (1) Where an appeal to an appellate court requires the leave of that court, the notice of motion for leave shall,

- (a) state that the motion will be heard on a date to be fixed by the Registrar;
- (b) be served within fifteen days after the date of the order or decision from which leave to appeal is sought, unless a statute provides otherwise; and
- (c) be filed with proof of service in the office of the Registrar, within five days after service.

##### *Motion Record and Factum*

(2) On a motion for leave to appeal,

- (a) the moving party shall serve a motion record that contains the documents referred to in subrule 37.10(3) and a factum consisting of a concise statement, without argument, of the facts and law relied on by the moving party; and
- (b) the responding party may serve a motion record that contains the documents referred to in subrule 37.10(4) and a factum consisting of a concise statement, without argument, of the facts and law relied on by the responding party,

and the motion records and factums shall be filed with proof of service at least three days before the hearing.

##### *Notice and Factum to State Questions on Appeal*

(3) The moving party’s notice of motion and factum shall, where practicable, set out the specific questions that it is proposed the court should answer if leave to appeal is granted.

##### *Time for Delivering Notice of Appeal*

(4) Where leave is granted, the notice of appeal shall be delivered within seven days after the granting of leave.



**COMMENCEMENT OF APPEALS*****Time for Appeal***

**61.04** (1) An appeal to an appellate court shall be commenced by serving a notice of appeal (Form 61A) together with the certificate required by subrule 61.05(1) on all parties whose interests may be affected by the appeal and on any person entitled by statute to be heard on the appeal, within thirty days after the date of the order appealed from, unless a statute or these rules provide otherwise.

(2) The time for appeal in a divorce action is prescribed by section 17 of the *Divorce Act* (Canada).

***Title of Proceeding***

(3) The title of the proceeding in an appeal shall be in accordance with Form 61B.

***Notice of Appeal***

(4) The notice of appeal (Form 61A) shall state the relief sought and the grounds of appeal.

(5) The notice of appeal, with proof of service, shall be filed in the office of the Registrar within ten days after service.

**CERTIFICATE OR AGREEMENT RESPECTING EVIDENCE*****Appellant's Certificate Respecting Evidence***

**61.05** (1) In order to minimize the number of documents and the length of the transcript required for an appeal, the appellant shall serve with the notice of appeal an appellant's certificate respecting evidence (Form 61C) setting out those portions of the evidence that, in his or her opinion, are not required for the appeal.

***Respondent's Certificate Respecting Evidence***

(2) Within fifteen days after service of the appellant's certificate, the respondent shall serve on the appellant a respondent's certificate respecting evidence (Form 61D), confirming the appellant's certificate or setting out any additions to or deletions from it.

(3) A respondent who fails to serve a respondent's certificate within the prescribed time shall be deemed to have confirmed the appellant's certificate.

***Agreement Respecting Evidence***

(4) Instead of complying with subrules (1) to (3), the parties may, within fifteen days after service of the notice of appeal, make an agreement respecting the documents to be included in the appeal books and the transcript required for the appeal.

***Ordering Transcripts***

(5) The appellant shall within thirty days after filing the notice of appeal file proof that he or she has ordered a transcript of all oral evidence that the parties have not agreed to omit, subject to any direction under subrule 61.08(4) (relief from compliance).

(6) A party who has previously ordered a transcript of oral evidence shall forthwith modify his or her order in writing to comply with the certificates or agreement.

(7) When the evidence has been transcribed, the court reporter shall forthwith give written notice to all parties and the Registrar.

***Costs Sanctions for Unnecessary Evidence***

(8) The court may impose costs sanctions where evidence is transcribed or exhibits are reproduced unnecessarily.

**CROSS-APPEALS**

**61.06** (1) A respondent who,

- (a) seeks to set aside or vary the order appealed from; or
- (b) will seek, if the appeal is allowed in whole or in part, other relief or a different disposition than the order appealed from,

shall, within fifteen days after service of the notice of appeal, serve a notice of cross-appeal (Form 61E) on all parties whose interests may be affected by the cross-appeal and on any person entitled by statute to be heard on the appeal, stating the relief sought and the grounds of the cross-appeal.

(2) The notice of cross-appeal, with proof of service, shall be filed in the office of the Registrar within ten days after service.

(3) Where a respondent has not delivered a notice of cross-appeal, no cross-appeal may be heard except with leave of the court hearing the appeal.

**AMENDMENT OF NOTICE OF APPEAL OR CROSS-APPEAL*****Supplementary Notice to be Served and Filed***

**61.07** (1) The notice of appeal or cross-appeal may be amended without leave, before the appeal is perfected, by serving on each of the parties on whom the notice was served a supplementary notice of appeal or cross-appeal (Form 61F) and filing it with proof of service.

***Argument Limited to Grounds Stated***

(2) No grounds other than those stated in the notice of appeal or cross-appeal or supplementary notice may be relied on at the hearing, except with leave of the court hearing the appeal.

**PERFECTING APPEALS*****Time for Perfecting***

**61.08** (1) The appellant shall perfect the appeal by complying with subrules (2) and (3),

- (a) where no transcript of evidence is required for the appeal, within thirty days after filing the notice of appeal; or
- (b) where a transcript of evidence is required for the appeal, within thirty days after receiving notice that the evidence has been transcribed.

***Record and Exhibits***

(2) The appellant shall cause to be forwarded to the Registrar the record and the original exhibits from the court or tribunal from which the appeal is taken.

***Material to be Served and Filed***

(3) The appellant shall,

- (a) serve on every other party to the appeal and any person entitled by statute or an order under rule 13.03 (intervention in appeal) to be heard on the appeal, and file with the Registrar, with proof of service,
  - (i) in an appeal to the Court of Appeal, five copies; or
  - (ii) in an appeal to the Divisional Court, three copies, of the appeal book referred to in rule 61.09, the transcript of evidence, and the appellant's factum referred to in rule 61.10; and
- (b) file with the Registrar a certificate of perfection stating that the record, exhibits, appeal book, transcript and appellant's factum have been filed, and setting out the name, address and telephone number of the solicitor for,
  - (i) every party to the appeal, and
  - (ii) any person entitled by statute or an order under rule 13.03 (intervention in appeal) to be heard on the appeal,or, where a party or person acts in person, his or her name, address for service and telephone number.

### ***Relief from Compliance***

- (4) Where compliance with the rules governing appeal books or transcripts of evidence would cause undue expense or delay, a judge of the appellate court may give special directions.

### ***Notice of Listing for Hearing***

- (5) When an appeal is perfected, the Registrar shall place it on the list of cases to be heard at the appropriate place of hearing and shall mail a notice of listing for hearing (Form 61G) to every person listed in the certificate of perfection.

## **APPEAL BOOK**

- 61.09** (1) The appeal book shall contain, in the following order, a copy of,
- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
  - (b) the notice of appeal and any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
  - (c) the order or decision appealed from;
  - (d) the reasons of the court or tribunal appealed from;
  - (e) the pleadings or notice of application or any other document that initiated the proceeding or defines the issues in it;
  - (f) any affidavit evidence, including exhibits, that the parties have not agreed to omit;
  - (g) all documentary exhibits filed at a hearing or marked on an examination that the parties have not agreed to omit, arranged in order by date and not by exhibit number or, where there are documents having common characteristics, arranged in separate groups in order by date;
  - (h) the certificates or agreement respecting evidence referred to in rule 61.05;
  - (i) any order made in respect of the conduct of the appeal;
  - (j) any other document relevant to the hearing of the appeal; and



- (k) a certificate (Form 61H) signed by the appellant's solicitor, or on the solicitor's behalf by someone he or she has specifically authorized, stating that the contents of the appeal book are complete and legible.

(2) The Registrar may refuse to accept an appeal book if it does not comply with these rules or is not legible.

### **APPELLANT'S FACTUM**

**61.10** The appellant's factum shall be signed by the appellant's counsel, or on counsel's behalf by someone he or she has specifically authorized, and shall consist of,

- (a) Part I, containing a statement identifying the appellant and the court or tribunal appealed from and stating the result in that court or tribunal;
- (b) Part II, containing a concise summary of the facts relevant to the issues on the appeal, with such reference to the evidence by page and line as is necessary;
- (c) Part III, containing a statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- (d) Part IV, containing a statement of the order that the appellate court will be asked to make, including any order for costs;
- (e) Schedule A, containing a list of the authorities referred to; and
- (f) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws.

### **RESPONDENT'S FACTUM**

#### ***Filing and Service***

**61.11** (1) Every respondent shall prepare a respondent's factum and shall file with the Registrar,

- (a) in an appeal to the Court of Appeal, five copies; or
- (b) in an appeal to the Divisional Court, three copies,

with proof of service on all other parties to the appeal.

#### ***Time for Delivery***

(2) A respondent's factum shall be delivered within thirty days after service of the appeal book, transcript of evidence and appellant's factum.

#### ***Contents***

(3) The respondent's factum shall be signed by the respondent's counsel, or on counsel's behalf by someone he or she has specifically authorized, and shall consist of,

- (a) Part I, containing a statement of the facts in the appellant's summary of relevant facts that the respondent accepts as correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with such reference to the evidence by page and line as is necessary;
- (b) Part II, containing the position of the respondent with respect to each issue raised by the appellant, immediately followed by a concise statement of the law and the authorities relating to that issue;
- (c) Part III, containing a statement of any additional issues raised by the respondent, the statement of each issue to be immediately followed by a concise statement of the law and the authorities relating to that issue;



- (d) Part IV, containing a statement of the order that the appellate court will be asked to make, including any order for costs;
- (e) Schedule A, containing a list of the authorities referred to; and
- (f) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws that are not included in Schedule B to the appellant's factum.

### ***Cross-Appeal***

- (4) Where a respondent has served a notice of cross-appeal under rule 61.06,
  - (a) the respondent shall prepare a factum as an appellant by cross-appeal and deliver it with or incorporate it in the respondent's factum; and
  - (b) the appellant shall deliver a factum as a respondent to the cross-appeal within ten days after service of the respondent's factum.

## **DISMISSAL FOR DELAY**

### ***Motion by Respondent***

**61.12** (1) Where an appellant has not,

- (a) filed proof that a transcript of evidence that the parties have not agreed to omit was ordered within the time prescribed by subrule 61.05(5); or
- (b) perfected the appeal within the time prescribed by subrule 61.08(1),

the respondent may make a motion to the Registrar, on ten days notice to the appellant, to have the appeal dismissed for delay.

### ***Notice by Registrar***

(2) Where the appellant has not,

- (a) filed a transcript of evidence within thirty days after the Registrar received notice that the evidence has been transcribed; or
- (b) perfected the appeal within one year after filing the notice of appeal,

the Registrar may serve notice on the appellant that the appeal will be dismissed for delay unless it is perfected within ten days after service of the notice.

### ***Registrar to Dismiss where Default not Cured***

(3) Where the appellant does not cure the default within ten days after service of a notice under subrule (1) or (2) or such longer period as a judge of the appellate court allows, the Registrar shall make an order in Form 61I dismissing the appeal for delay, with costs.

### ***Cross-Appeals***

(4) Where a respondent who has served a notice of cross-appeal has not delivered a factum in the cross-appeal within thirty days after service of the appeal book, transcript of evidence and appellant's factum, the appellant may make a motion to the Registrar, on ten days notice to the respondent, to have the cross-appeal dismissed for delay.

(5) Where the respondent does not deliver a factum in the cross-appeal within five days after service of a notice under subrule (4) or such longer period as a judge of the appellate court allows, the Registrar shall make an order in Form 61I dismissing the cross-appeal for delay, with costs.

## ABANDONED APPEALS

### *Delivery of Notice of Abandonment*

**61.13** (1) A party may abandon his or her appeal or cross-appeal by delivering a notice of abandonment (Form 61J).

### *Deemed Abandonment*

(2) A party who serves a notice of appeal or cross-appeal and does not file it within ten days after service shall be deemed to have abandoned the appeal or cross-appeal, unless the court orders otherwise.

### *Effect of Abandonment*

(3) Where an appeal or cross-appeal is abandoned or is deemed to have been abandoned, the appeal or cross-appeal is at an end, and the respondent or appellant is entitled to the costs of the appeal or cross-appeal, unless a judge of the appellate court orders otherwise.

## CROSS-APPEAL WHERE APPEAL DISMISSED FOR DELAY OR ABANDONED

**61.14** (1) Where an appeal is dismissed for delay or is abandoned, a respondent who has cross-appealed may,

- (a) within fifteen days thereafter, deliver a notice of election to proceed (Form 61K); and
- (b) make a motion to a judge of the appellate court for directions in respect of the cross-appeal.

(2) Where the respondent does not deliver a notice of election to proceed within fifteen days, the cross-appeal shall be deemed to be abandoned without costs unless a judge of the appellate court orders otherwise.

## MOTIONS IN APPELLATE COURT

### *Rule 37 Applies Generally*

**61.15** (1) Rule 37, except rules 37.02 to 37.05 (jurisdiction to hear motions, place of hearing, to whom to be made, hearing date), 37.10 (motion record) and 37.17 (motion before commencement of proceeding), applies to motions in an appellate court, with necessary modifications.

### *Motion to Receive Evidence*

(2) A motion under clause 144(4)(b) of the *Courts of Justice Act, 1984* (motion to receive further evidence) shall be made to the panel hearing the appeal.

### *Motion to be Heard by More Than One Judge*

(3) Where a motion in an appellate court is to be heard by more than one judge, the notice of motion shall state that the motion will be heard on a date to be fixed by the Registrar.

### *Motion Record and Factum*

(4) On a motion referred to in subrule (3),

- (a) the moving party shall serve a motion record that contains the documents referred to in subrule 37.10(3) and a factum consisting of a concise statement, without argument, of the facts and law relied on by the moving party; and

- (b) the responding party shall serve a motion record that contains the documents referred to in subrule 37.10(4) and a factum consisting of a concise statement, without argument, of the facts and law relied on by the responding party,

and the motion records and factums shall be filed with proof of service at least three days before the hearing.

***Review of Registrar's Order***

(5) A person affected by an order or decision of the Registrar may make a motion to a judge of the appellate court to set it aside or vary it by a notice of motion that is served forthwith after the order or decision comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion.

***Review of Single Judge's Order***

(6) A person who moves to set aside or vary the order of a judge of an appellate court under clause 16(3)(b) or 18(3)(b) of the *Courts of Justice Act, 1984* shall do so by a notice of motion that is served within four days after the order is made and states that the motion will be heard on a date to be fixed by the Registrar.

**RULE 62 APPEALS FROM INTERLOCUTORY ORDERS****PROCEDURE ON APPEAL*****Application of Rule***

- 62.01** (1) Subrules (2) to (10) apply to an appeal to a judge of the High Court from,
- (a) an interlocutory order of a District Court judge under subsection 36(3) of the *Courts of Justice Act, 1984*;
  - (b) an interlocutory order of a master under clause 13(2)(a) of the *Courts of Justice Act, 1984*;
  - (c) an interlocutory order of a local judge of the High Court, where the order could have been made by a master, under clause 13(2)(b) of the *Courts of Justice Act, 1984*; and
  - (d) a certificate of assessment of costs under clause 13(2)(c) or subsection 36(5) or 104(4) of the *Courts of Justice Act, 1984*.

***Time For Appeal***

(2) An appeal shall be commenced by serving a notice of appeal (Form 62A) on all parties whose interests may be affected by the appeal, within seven days after the date of the order or certificate appealed from.

***Hearing Date***

(3) The notice of appeal shall name the first available hearing date that is not less than seven days after the date of service of the notice of appeal, and rule 37.05 (hearing date in Supreme Court motions courts) applies, with necessary modifications.

***Notice of Appeal***

(4) The notice of appeal (Form 62A) shall state the relief sought and the grounds of appeal, and no grounds other than those stated in the notice may be relied on at the hearing, except with leave of the judge hearing the appeal.

(5) The notice of appeal shall be filed in the court office where the appeal is to be heard, with proof of service, not later than three days before the hearing date.

***Place of Hearing***

(6) The appeal may be heard at Toronto, Ottawa, London or any other place where a judge of the High Court is available to hear motions.

***Appeal Record***

(7) The appellant shall, not later than three days before the hearing, serve on every other party and file, with proof of service, in the court office where the appeal is to be heard, an appeal record containing, in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the notice of appeal;
- (c) a copy of the order or certificate appealed from and the reasons, if any; and
- (d) such other material that was before the judge or officer appealed from as is necessary for the hearing of the appeal,

and a factum consisting of a concise statement, without argument, of the facts and law relied on by the appellant.



(8) The respondent shall, not later than 2 p.m. on the day before the hearing, serve on every other party and file with proof of service, in the court office where the appeal is to be heard,

- (a) any further material that was before the judge or officer appealed from and is necessary for the hearing of the appeal; and
- (b) a factum consisting of a concise statement, without argument, of the facts and law relied on by the respondent.

(9) A judge of the High Court, before or at the hearing of the appeal, may dispense with compliance with subrules (7) and (8) in whole or in part.

#### ***Abandoned Appeals***

(10) Rule 61.13 applies, with necessary modifications, to the abandonment of an appeal under this rule.

### **MOTION FOR LEAVE TO APPEAL**

#### ***Leave to Appeal from Interlocutory Order of a High Court Judge***

**62.02** (1) Leave to appeal to the Divisional Court under clause 15(1)(b) of the *Courts of Justice Act, 1984* from an interlocutory order of a judge of the High Court shall be obtained from a High Court judge, but a judge shall not hear a motion for leave to appeal from his or her own order.

#### ***Leave to Appeal from Interlocutory Order of a Local Judge***

(2) Leave to appeal to the Divisional Court under clause 15(1)(c) of the *Courts of Justice Act, 1984* from an interlocutory order of a local judge of the High Court that could not have been made by a master shall be obtained from,

- (a) a High Court judge; or
- (b) a local judge, but a local judge shall not hear a motion for leave to appeal from his or her own order.

### **Time for Service of Motion**

(3) The notice of motion for leave shall be served within seven days after the date of the order from which leave to appeal is sought.

#### ***Hearing Date***

(4) The notice of motion for leave shall name the first available hearing date that is at least three days after service of the notice of motion.

#### ***Grounds on Which Leave May Be Granted***

- (5) Leave to appeal shall not be granted unless,
  - (a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or
  - (b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

#### ***Factums Required***

(6) On a motion for leave, each party shall serve on every other party to the motion a factum consisting of a concise statement, without argument, of the facts and law relied

on by the party, and file it with proof of service in the court office where the motion is to be heard, not later than 2 p.m. on the day before the hearing.

***Reasons for Granting Leave***

(7) The judge granting leave shall give brief reasons in writing.

***Subsequent Procedure Where Leave Granted***

(8) Where leave is granted the notice of appeal required by rule 61.04, together with the appellant's certificate respecting evidence required by subrule 61.05(1), shall be delivered within seven days after the granting of leave, and thereafter Rule 61 applies to the appeal.

**RULE 63 STAY PENDING APPEAL****AUTOMATIC STAY ON DELIVERY OF NOTICE OF APPEAL**

**63.01** (1) On the delivery of a notice of appeal from an order, whether final or interlocutory, the order is stayed until the disposition of the appeal, but a judge of the court to which the appeal has been taken may order otherwise on such terms as are just.

(2) Subrule (1) does not apply to,

- (a) an order for an injunction;
- (b) a mandatory order; or
- (c) an order awarding support or maintenance, or custody of or access to a child.

**STAY BY ORDER**

**63.02** (1) An order, whether final or interlocutory, may be stayed on such terms as are just, by,

- (a) an order of the court whose decision is to be appealed, but the stay expires,
  - (i) when the time for delivery of a notice of motion for leave to appeal or notice of appeal expires, or
  - (ii) when a notice of motion for leave to appeal or notice of appeal is delivered, whichever is earlier; or
- (b) an order of a judge of the court to which a motion for leave to appeal has been made or an appeal has been taken.

(2) A stay granted under subrule (1) may be set aside or varied, on such terms as are just, by a judge of the court to which a motion for leave to appeal may be or has been made or to which an appeal may be or has been taken.

**EFFECT OF STAY***Generally*

**63.03** (1) Where an order is stayed, no steps may be taken under the order or for its enforcement, except,

- (a) by order of a judge of the court to which a motion for leave to appeal has been made or an appeal has been taken; or
- (b) as provided in subrules (2) and (3).

*Entry of Order and Assessment of Costs*

(2) A stay does not prevent the settling, signing and entering of the order or the assessment of costs.

*Writ of Execution*

(3) A stay does not prevent the issue of a writ of execution or the filing of the writ in a sheriff's office or land registry office, but no instruction or direction to enforce the writ shall be given to a sheriff while the stay remains in effect.

*Certificate of Stay*

- (4) Where an order is stayed, the registrar of the court,
  - (a) that granted the stay; or

(b) to which an appeal has been taken, shall issue, on requisition by a party to the appeal, a certificate of stay (Form 63A) and, when the certificate has been filed with the sheriff, the sheriff shall not commence or continue enforcement of the order until satisfied that the stay is no longer in effect.

(5) A requisition for a certificate of stay shall state whether the stay is under subrule 63.01(1) or by order under subrule 63.02(1), and if by order, shall set out particulars of the order.

***Setting Aside Writ of Execution***

(6) A judge of the court to which a motion for leave to appeal has been made or an appeal has been taken may set aside the issue or filing of a writ of execution where the moving party or appellant gives security satisfactory to the court.



## PARTICULAR PROCEEDINGS

### RULE 64 MORTGAGE ACTIONS

#### DEFINITION

**64.01** In rules 64.02 to 64.06, “subsequent encumbrancer” means a person who has a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question in the action.

#### DEFAULT JUDGMENT WITH REFERENCE

**64.02** Where a default judgment in a mortgage action directs a reference, the reference shall be directed,

- (a) in a Supreme Court action, to a master sitting in the county where the action was commenced or, if none, to a local judge sitting in that county; or
- (b) in a District Court action, to the local registrar in the county where the action was commenced.

#### FORECLOSURE ACTIONS

##### *Persons to be Joined*

**64.03** (1) In an action for foreclosure, all persons interested in the equity of redemption shall be named as defendants in the statement of claim, subject to subrule (2).

(2) The plaintiff may commence a foreclosure action without naming subsequent encumbrancers as defendants where it appears expedient to do so by reason of their number or otherwise, but the plaintiff may make a motion without notice on a reference after judgment to add as defendants all subsequent encumbrancers who were not originally made parties.

(3) On a reference, where the referee considers that subsequent encumbrancers should have been named as defendants in the statement of claim, the referee may refuse to allow the additional costs of adding them on the reference.

##### *Statement of Claim*

(4) The statement of claim in a foreclosure action shall be in Form 14B.

##### *Claims that may be Joined*

(5) In a foreclosure action a mortgagee may also claim,

- (a) payment of the mortgage debt by any party personally liable for it; and
- (b) possession of the mortgaged property.

##### *Request to Redeem*

(6) A defendant in a foreclosure action who wishes to redeem the mortgaged property shall file a request to redeem (Form 64A) within the time prescribed by rule 18.01 for delivery of a statement of defence, or at any time before being noted in default, whether he or she delivers a statement of defence or not.

(7) A request to redeem filed by a defendant who is a subsequent encumbrancer shall contain particulars, verified by affidavit, of his or her claim and the amount owing.

***Effect of Filing Request to Redeem***

(8) A defendant who has filed a request to redeem is entitled to,

- (a) seven days notice of the taking of the account of the amount due to the plaintiff; and
- (b) sixty days after the taking of the account of the amount due to the plaintiff, to redeem the mortgaged property,

but if the defendant is a subsequent encumbrancer, he or she is entitled to redeem only if his or her claim is proved on a reference or is not disputed.

***Default Judgment where no Request to Redeem***

(9) Where a defendant in a foreclosure action has been noted in default and has not filed a request to redeem, the plaintiff,

- (a) if he or she wishes a reference concerning subsequent encumbrancers, may require the registrar to sign judgment for foreclosure with a reference (Form 64B); or
- (b) if he or she does not wish a reference concerning subsequent encumbrancers, may require the registrar to sign judgment for immediate foreclosure (Form 64C).

***Default Judgment where Request to Redeem Filed***

(10) Where a defendant in a foreclosure action has been noted in default but has filed a request to redeem, the plaintiff,

- (a) if he or she wishes a reference concerning subsequent encumbrancers, may require the registrar to sign judgment for foreclosure with a reference (Form 64B); or
- (b) if he or she does not wish a reference concerning subsequent encumbrancers, may require the registrar,
  - (i) to take an account of the amount due to the plaintiff,
  - (ii) where more than one party is entitled to redeem, to determine the priority in which each is so entitled, and
  - (iii) to sign judgment for foreclosure (Form 64D).

(11) Where, on the taking of the account or in determining priorities, any dispute arises between the parties, or the registrar is in doubt, the registrar may sign judgment for foreclosure with a reference (Form 64B).

***Redemption by Named Defendant***

(12) In a foreclosure action, a defendant named in the statement of claim,

- (a) who has filed a request to redeem; and
- (b) whose claim is proved on a reference or is not disputed, if he or she is a subsequent encumbrancer,

may redeem the mortgaged property on paying, within the time fixed by the judgment or report on a reference, the amount, including costs, found due to the plaintiff.

***Redemption by Encumbrancer added on Reference***

(13) A subsequent encumbrancer added on a reference who attends on the reference and whose claim is proved or is not disputed is entitled to redeem the mortgaged property within the time fixed by the report on the reference.

***Foreclosure of Subsequent Encumbrancers***

(14) Where a subsequent encumbrancer has been served with a notice of reference under subrule 64.06(4), (7) or (8) and fails to attend and prove a claim on the reference, the referee shall so report and, on confirmation of the report, the claim of that party is foreclosed and the plaintiff may obtain a final order of foreclosure (Form 64E) against that party on motion to the court without notice.

***Final Order of Foreclosure***

(15) Where no defendant other than a subsequent encumbrancer has filed a request to redeem, and where no subsequent encumbrancer has attended and proved a claim on the reference, the referee shall so report and, on confirmation of the report, a final order of foreclosure may be obtained against all defendants on motion to the court without notice.

(16) On default of payment according to the judgment or report on a reference in a foreclosure action, a final order of foreclosure may be obtained against the party in default on motion to the court without notice.

***Conversion from Foreclosure to Sale***

(17) A defendant in a foreclosure action who is not a subsequent encumbrancer, and who wishes a sale but does not wish to defend the action, shall file a request for sale (Form 64F) within the time prescribed by rule 18.01 for delivery of a statement of defence, or at any time before being noted in default, and the plaintiff may require the registrar to sign judgment for sale (Form 64G or 64H).

(18) A subsequent encumbrancer named as a defendant in the statement of claim in a foreclosure action who wishes a sale, but does not wish to defend the action or redeem the mortgaged property, shall within the time prescribed by rule 18.01 for delivery of a statement of defence, or at any time before being noted in default,

- (a) pay into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale; and
- (b) file a request for sale (Form 64F), together with particulars, verified by affidavit, of his or her claim and the amount owing,

and the plaintiff may require the registrar to sign judgment for sale (Form 64I) conditional on proof of the subsequent encumbrancer's claim.

(19) A subsequent encumbrancer added on a reference in a foreclosure action who wishes a sale shall within ten days after service on him or her of notice of the reference, or where the encumbrancer is served outside Ontario, within such further time as the referee directs,

- (a) pay into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale; and
- (b) serve on the plaintiff, and file with proof of service, a request for sale (Form 64F), together with particulars, verified by affidavit, of his or her claim and the amount owing,

and where the subsequent encumbrancer attends and proves a claim on the reference, the referee shall make an order amending the judgment from a judgment for foreclosure to a judgment for sale.

(20) On the reference, the referee may require the subsequent encumbrancer to pay an additional sum of money into court as security for costs.



(21) The referee shall deal with the security given under subrule (18), (19) or (20) in the report on the reference.

***Power of Referee to Convert from Foreclosure to Sale***

(22) The referee may on the motion of any party, either before or after judgment, direct a sale instead of foreclosure and may direct an immediate sale without previously determining the priorities of encumbrancers or giving the usual or any time to redeem.

***Power of Referee to Reconvert to Foreclosure***

(23) Where a foreclosure action has been converted into a sale action, the referee may, on the motion of any party, either before or after judgment, direct foreclosure instead of a sale where it appears that the value of the property is unlikely to be sufficient to satisfy the claim of the plaintiff.

***Where Judgment for Sale Obtained in Foreclosure Action***

(24) Where a judgment for sale has been obtained in a foreclosure action, a subsequent encumbrancer is entitled to notice of the hearing for directions on the reference for sale, whether he or she has filed a request to redeem the mortgaged property or not.

(25) Where the plaintiff wishes to transfer carriage of the sale to the defendant requesting the sale, he or she may do so by serving on the defendant a notice of election to transfer carriage of the sale and filing it with proof of service, and the defendant then has carriage of the sale and is entitled to the return of his or her deposit paid into court under subrule (18), (19) or (20).

***Procedure on Reference where Foreclosure Action Converted to Sale***

(26) Where a foreclosure action is converted to a sale action under subrule (17), (18), (19), or (22), the reference shall proceed in the same manner as in a sale action.

## **SALE ACTIONS**

***Persons to be Joined***

**64.04** (1) In an action for sale of a mortgaged property, all persons interested in the equity of redemption, other than subsequent encumbrancers, shall be named as defendants in the statement of claim.

(2) In a sale action, subsequent encumbrancers shall be added as parties on a reference after judgment.

***Statement of Claim***

(3) The statement of claim in a sale action shall be in Form 14B.

***Claims that may be Joined***

(4) In a sale action, a mortgagee may also claim,

- (a) payment of the mortgage debt by any party personally liable for it; and
- (b) possession of the mortgaged property.

***Request to Redeem***

(5) A defendant in a sale action who wishes to redeem the mortgaged property shall file a request to redeem (Form 64A) within the time prescribed by rule 18.01 for delivery of a statement of defence, or at any time before being noted in default, whether the defendant delivers a statement of defence or not.



(6) In a sale action, a subsequent encumbrancer is not entitled to file a request to redeem, and where a foreclosure action is converted to a sale action, a subsequent encumbrancer is not entitled to redeem even though he or she has filed a request to redeem.

#### ***Effect of Filing Request to Redeem***

- (7) A defendant who has filed a request to redeem is entitled to,
- (a) seven days notice of the taking of the account of the amount due to the plaintiff; and
  - (b) sixty days after the taking of the account of the amount due to the plaintiff, to redeem the mortgaged property.

#### ***Default Judgment***

- (8) Where a defendant in a sale action has been noted in default and,
- (a) has not filed a request to redeem, the plaintiff may require the registrar to sign judgment for immediate sale with a reference (Form 64J); or
  - (b) has filed a request to redeem, the plaintiff may require the registrar to sign judgment for sale with a reference (Form 64K).

#### ***Redemption by Named Defendant***

(9) In a sale action a defendant named in the statement of claim who has filed a request to redeem may redeem the mortgaged property on paying, within the time fixed by the report on the reference, the amount, including costs, found due to the plaintiff.

#### ***Final Order for Sale***

(10) Where no defendant has filed a request to redeem and where no subsequent encumbrancer has attended and proved a claim on the reference, the referee shall so report and, on confirmation of the report, a final order for sale (Form 64L) may be obtained on motion to the court without notice.

(11) On default of payment according to the judgment or a report on a reference in a sale action, a final order for sale may be obtained on motion to the court without notice.

#### ***Purchase Money***

(12) Where an order for sale has been obtained, the property shall be sold under the referee's direction, and the purchaser shall pay the purchase money into court unless the referee directs otherwise.

(13) The purchase money shall be applied in payment of what has been found due to the plaintiff and the other encumbrancers, if any, according to their priorities, together with subsequent interest and subsequent costs.

#### ***Order for Payment of Deficiency on Sale***

(14) Where the purchase money is not sufficient to pay what has been found due to the plaintiff, the plaintiff is entitled, on motion to the court without notice, to an order for payment of the deficiency by any defendant liable for the mortgage debt.

### **REDEMPTION ACTIONS**

#### ***Persons to be Joined***

**64.05** (1) In an action for redemption of a mortgaged property, all persons interested in the equity of redemption, other than subsequent encumbrancers, shall be named as plaintiffs or defendants in the statement of claim.

(2) In a redemption action, subsequent encumbrancers shall be added as defendants only where the plaintiff is declared foreclosed.

***Claims that May Be Joined***

(3) In a redemption action, a person interested in the equity of redemption may also claim possession of the mortgaged property.

***Judgment***

(4) In a redemption action, where the defendant has been noted in default, the plaintiff may require the registrar to sign judgment for redemption (Form 64M).

(5) Every judgment for redemption shall direct a reference, whether or not there are any subsequent encumbrancers.

***Where Plaintiff Fails to Redeem***

(6) On default of payment according to the report in a redemption action, the defendant is entitled, on motion to the court without notice, to a final order of foreclosure against the plaintiff or to an order dismissing the action with costs.

(7) Where the plaintiff is declared foreclosed, directions may be given, in the final order foreclosing the plaintiff or by a subsequent order, that the reference be continued for redemption or foreclosure, or for redemption or sale, against any subsequent encumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants among themselves.

(8) Where the reference is continued under subrule (7),

- (a) for redemption or foreclosure, the reference shall proceed in the same manner as in a foreclosure action;
- (b) for redemption or sale, the reference shall proceed in the same manner as in a sale action,

and for that purpose the last encumbrancer shall be treated as the owner of the equity of redemption.

(9) Where the plaintiff is declared foreclosed, a subsequent encumbrancer who attends and proves a claim on the reference is entitled to thirty days to redeem the mortgaged property.

***Where Nothing Due to Defendant***

(10) Where, on a reference in a redemption action, nothing is found due to the defendant or a balance is found due from the defendant to the plaintiff, the defendant is liable for the costs of the action and the defendant shall pay any balance due to the plaintiff forthwith after confirmation of the report on the reference.

**PROCEDURE ON MORTGAGE REFERENCES GENERALLY**

***Rule 55 Applies***

**64.06** (1) Rule 55 (procedure on a reference) applies to a reference in an action for foreclosure, sale or redemption, except as provided in this rule.

***Plaintiff to File Material Concerning Subsequent Encumbrancers***

(2) On a reference in an action for foreclosure, sale or redemption, the plaintiff shall file sufficient evidence to enable the referee to determine who appears to have a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question.

***Duties and Powers of Referee***

- (3) On the reference the referee shall,
- (a) add subsequent encumbrancers as defendants in accordance with subrule (4);
  - (b) fix a time and place for determining the validity of the claims of subsequent encumbrancers;
  - (c) determine who has a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question;
  - (d) take an account of what is due on the mortgage and what is due to subsequent encumbrancers who prove a claim;
  - (e) fix or assess the costs of the parties;
  - (f) fix a time and place for payment, where applicable;
  - (g) where the reference is for immediate sale, give directions for the sale and defer taking accounts until after the sale is held or proves abortive;
  - (h) where a sale is being conducted on the request of a subsequent encumbrancer, determine that the encumbrancer has a valid claim before giving directions for the sale;
  - (i) take all necessary steps for redemption by or foreclosure of the parties entitled to redeem the mortgaged property and, where applicable, for sale of the mortgaged property; and
  - (j) take subsequent accounts and fix or assess subsequent costs as required.

***Adding Subsequent Encumbrancers***

(4) Subject to subrule 64.05(2) (subsequent encumbrancers in redemption action), the referee shall direct all persons who appear to have a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question and who were not named as defendants in the statement of claim to be added as defendants and to be served with a notice of reference to subsequent encumbrancer added on reference (Form 64N).

(5) A subsequent encumbrancer added under subrule (4) may be served with documents on the reference,

- (a) in the case of an execution creditor, by mail at the address shown on the writ of execution or the most recent request to renew it or, if the creditor's address is not shown, by serving the creditor's solicitor in a manner authorized by subrule 16.05(1);
- (b) in the case of a person who has registered a claim for lien under the *Construction Lien Act, 1983*, by mail at the address for service shown on the claim for lien; or
- (c) in any other case, personally or by an alternative to personal service under rule 16.03.

(6) A person served with a notice under subrule (4) may move within ten days after service, or where the person is served outside Ontario, within such further time as the referee directs, to set aside or vary the judgment in the action or the order adding him or her as a defendant.

(7) Where it appears to the referee that a person who was named as a defendant in the statement of claim may have a lien, charge or encumbrance on the mortgaged prop-



erty subsequent to the mortgage in question, although the person was not alleged to be a subsequent encumbrancer in the statement of claim, the referee shall direct that defendant to be served with a notice of reference to subsequent encumbrancer named as original party (Form 64O).

***Notice of Reference to Original Defendants***

(8) Subject to subrule (10), all persons who were named as defendants in the statement of claim shall be served with a notice of reference to original defendants (Form 64P), stating the names and nature of the claims of all those appearing to have a lien, charge or encumbrance on the mortgaged property.

(9) Any person named as a defendant in the statement of claim who is not a subsequent encumbrancer and who has not filed a request to redeem or a request for sale may be served with the notice of reference by mail at his or her last known address.

(10) A subsequent encumbrancer who was named as a defendant in the statement of claim and who has not filed a request to redeem or a request for sale is not entitled to notice of a reference for foreclosure.

***Adding Parties Other than Encumbrancers***

(11) Where on a reference it appears that there are persons interested in the equity of redemption, other than subsequent encumbrancers, who are not already defendants to the action, the referee may order that they be added as defendants on the reference on such terms as are just, and the order shall be served on them, together with the judgment in the action and a notice to added party (Form 64Q), personally or by an alternative to personal service under rule 16.03.

(12) A defendant added under subrule (11) may move within ten days after service of the material referred to in subrule (11), or where the defendant is served outside Ontario, within such further time as the referee directs, to set aside or vary the judgment in the action or the order adding him or her as a defendant.

***Where more than one Party Entitled to Redeem***

(13) One day shall be fixed for payment by all the parties entitled to redeem and, where more than one party is entitled to redeem, the referee shall determine the priority in which they are so entitled.

(14) Where more than one defendant entitled to redeem makes payment, any such defendant may make a motion on the reference for further directions.

***Proof of Account where Mortgage Assigned***

(15) In an action for foreclosure or sale by, or for redemption against, an assignee of a mortgagee, a statement of the mortgage account, verified by affidavit of the assignee, may be taken as proof of the state of the account and an affidavit is not required from the mortgagee or any intermediate assignee denying any payment to the mortgagee or intermediate assignee, unless the mortgagor or the mortgagor's assignee, or any party entitled to redeem, denies by affidavit the correctness of the statement of account.

***Referee's Report***

(16) The referee shall set out in the report on the reference,

(a) the names of,

(i) all persons who were parties on the reference,

(ii) all subsequent encumbrancers who were served with notice of the reference, and



(iii) all subsequent encumbrancers who failed to attend on the reference and prove their claims;

(b) the amount and priority of the claims of the parties who attended and proved their claims on the reference, and the report shall show those parties as the only encumbrancers of the property; and

(c) the date on which the report was settled.

(17) The report shall be served on all parties who attended on the reference and on any defendant who filed a request to redeem or a request for sale and shall be filed with proof of service.

(18) Where any period fixed for payment expires within fifteen days after confirmation of the report, a new account shall be taken.

#### ***Mortgagee to Transfer Property where Redeemed***

(19) Subject to the *Mortgages Act*, where a party pays the amount found due on the mortgage, the mortgagee shall, unless the judgment directs otherwise, transfer the mortgaged property to the party making the payment or his or her nominee, free and clear of all encumbrances incurred by the mortgagee, and the mortgagee shall deliver up all instruments in his or her possession, control or power that relate to the mortgaged property.

#### ***District Court Registrar May Request Directions***

(20) Where a District Court registrar is of the opinion that a mortgage reference directed to him or her by a judgment ought to be dealt with by a judge, the registrar may request directions from the judge.

#### ***Change of Account***

(21) Where the state of account as ascertained by an order or report has changed before the day fixed for payment, the mortgagee may, at least fifteen days before that day, serve notice of the change of account on the person required to pay, giving particulars of the change of account and of the sum to be paid.

(22) Where notice of a change of account has been served and the sums mentioned in it are proper, the court may make a final order without further notice or, on the motion for a final order, may fix a new day for payment and may require notice to be served.

(23) A party served with notice of change of account who is dissatisfied may make a motion to the court to determine the amount to be paid and to fix a new day for payment.

(24) Where the state of account has changed before the day fixed for payment and notice of the change has not been served,

(a) where the amount payable for redemption is reduced, a new day shall be fixed for payment, on notice to the persons entitled to redeem; or

(b) where the amount payable for redemption has increased, the mortgagee may move for a final order after the day fixed for payment, without the fixing of a new day.

(25) Where the state of the new account has changed after the day fixed for payment, it is not necessary to fix a new day, unless the court so directs on the motion for a final order.

(26) Where it becomes necessary to fix a new day for payment after the expiration of the original period, the further time allowed shall be thirty days, unless the court orders otherwise.

(27) Notwithstanding subrule (26), the court may, on motion of any party, extend or abridge the time for redemption for such time and on such terms as are just.

**RULE 65 PROCEEDINGS FOR ADMINISTRATION****WHERE AVAILABLE**

**65.01** (1) A proceeding for the administration of the estate of a deceased person or for the execution of a trust may be commenced by notice of application to the Supreme Court,

- (a) by a person claiming to be a creditor of the estate of the deceased person;
- (b) by a person claiming to be a beneficiary under the will or on the intestacy of the deceased person or under the instrument of trust; or
- (c) by an executor or administrator of the estate of the deceased person or a trustee.

(2) A judgment for administration of an estate (Form 65A) or for execution of a trust shall be granted only if the judge is satisfied that the questions between the parties cannot otherwise be properly determined.

(3) Where no accounts or insufficient accounts have been rendered, the judge may, instead of granting judgment for administration of the estate or for execution of the trust, order that the executors, administrators or trustees render to the applicant a proper statement of their accounts and may stay the application in the meantime.

**WHERE A REFERENCE IS DIRECTED**

**65.02** (1) A judgment for administration of an estate or for execution of a trust shall direct a reference, and the referee has power to deal with the property of the estate or trust, including power to give all necessary directions for its realization, and shall finally wind up all matters connected with the estate or trust without any further directions, except where the special circumstances of the case require interim reports or interlocutory orders.

(2) Interest on accounts taken in administration proceedings shall be computed on the debts of the deceased from the date of the judgment and on legacies from the end of one year after the death of the deceased, unless the will directs another time for payment.

(3) All money realized from the estate or trust shall forthwith be paid into court, and no money shall be distributed or paid out except by order of a judge.

**RULE 66 PARTITION PROCEEDINGS****WHERE AVAILABLE**

**66.01** (1) A proceeding for partition or sale of land under the *Partition Act* may be commenced by notice of application by any person who is entitled to compel partition.

(2) A proceeding for partition or sale by or on behalf of a minor shall be on notice to the Official Guardian.

**FORM OF JUDGMENT**

**66.02** A judgment for partition or sale shall be in Form 66A.

**PROCEEDS OF SALE**

**66.03** All money realized in a partition proceeding from a sale of land shall forthwith be paid into court, and no money shall be distributed or paid out except by order of a judge.



**RULE 67 PROCEEDINGS CONCERNING THE ESTATES OF MINORS****HOW COMMENCED**

**67.01** A proceeding for approval of the sale, mortgage, lease or other disposition of property of a minor may be commenced by notice of application to the Supreme Court on notice to the Official Guardian.

**AFFIDAVIT IN SUPPORT**

**67.02** (1) The affidavit in support of the application shall state,

- (a) the nature and amount of all the property to which the minor is entitled;
- (b) the nature and value of the property to be disposed of;
- (c) what annual income the property yields; and
- (d) the facts relied on to establish the necessity for the proposed disposition.

(2) Where an allowance is sought for maintenance of the minor, the affidavit shall state the amount required and the facts relied on to establish the need for the allowance and, where applicable, shall show the necessity for resorting to the property to provide the allowance.

(3) Where the appointment of a guardian is sought, the affidavit shall state the reasons for the appointment and the facts relied on to justify the appointment of the person proposed.

**WHERE CONSENT REQUIRED**

**67.03** (1) Approval of the sale, mortgage, lease or other disposition of property of a minor over the age of sixteen years shall not be given unless the consent of the minor has been filed, together with a solicitor's affidavit stating the solicitor's belief that the minor understood the consent when the solicitor read and explained it.

(2) A judge hearing an application referred to in subrule (1) may dispense with the necessity of filing the minor's consent and solicitor's affidavit.

(3) The judge may examine the minor with respect to his or her consent.

(4) Where the minor is outside Ontario, the judge may direct an inquiry to be made concerning the minor's consent in such manner as is just.

**RULE 68 PROCEEDINGS FOR JUDICIAL REVIEW****HOW COMMENCED**

**68.01** (1) An application to the Divisional Court or to the High Court for judicial review under the *Judicial Review Procedure Act* shall be commenced by notice of application, and where the application is to the Divisional Court the notice of application shall be in Form 68A.

(2) Where the application is to the Divisional Court and is not commenced in the office of the Divisional Court at Toronto, the local registrar in the office in which the application is commenced shall forthwith transfer a copy of the notice of application and any material filed in support of the application to the office of the Divisional Court, and all further documents in the application shall be filed there.

**APPLICABLE PROCEDURE***Divisional Court*

**68.02** (1) Rule 38, except as provided in subrule 38.01(2), and rules 68.03 to 68.06 apply to applications to the Divisional Court for judicial review.

*High Court*

(2) Rule 38 applies to applications to the High Court for judicial review under subsection 6(2) of the *Judicial Review Procedure Act*.

**HEARING DATE IN DIVISIONAL COURT**

**68.03** A notice of application shall state that the application is to be heard on a date to be fixed by the Registrar of the Divisional Court.

**APPLICATION RECORDS AND FACTUMS***Applicant*

**68.04** (1) The applicant shall deliver an application record and a factum,

- (a) where the nature of the application requires a record of the proceeding before the tribunal whose decision is to be reviewed, within thirty days after the record is filed with the Registrar; or
- (b) where the nature of the application does not require such a record, within thirty days after the application is commenced.

(2) The applicant's application record shall contain, in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the notice of application;
- (c) a copy of all affidavits and other material served by any party for use on the application;
- (d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
- (e) a copy of any other material in the court file that is necessary for the hearing of the application.

(3) The applicant's factum shall be signed by the applicant's counsel, or on counsel's behalf by someone he or she has specifically authorized, and shall consist of,

- (a) Part I, containing a statement identifying the applicant and the court or tribunal whose decision is to be reviewed and stating the result in that court or tribunal;
- (b) Part II, containing a concise summary of the facts relevant to the issues on the application, with specific reference to the evidence;
- (c) Part III, containing a statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- (d) Part IV, containing a statement of the order that the court will be asked to make, including any order for costs;
- (e) Schedule A, containing a list of the authorities referred to; and
- (f) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws.

### ***Respondent***

(4) The respondent shall deliver an application record and a factum within thirty days after service of the applicant's application record and factum.

(5) The respondent's application record shall contain,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and
- (b) a copy of any material to be used by the respondent on the application and not included in the application record.

(6) The respondent's factum shall be signed by the respondent's counsel, or on counsel's behalf by someone he or she has specifically authorized, and shall consist of,

- (a) Part I, containing a statement of the facts in the applicant's summary of relevant facts that the respondent accepts as correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with specific reference to the evidence;
- (b) Part II, containing the position of the respondent with respect to each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities relating to that issue;
- (c) Part III, containing a statement of any additional issues raised by the respondent, the statement of each issue to be immediately followed by a concise statement of the law and the authorities relating to that issue;
- (d) Part IV, containing a statement of the order that the court will be asked to make, including any order for costs;
- (e) Schedule A, containing a list of the authorities referred to; and
- (f) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws that are not included in Schedule B to the applicant's factum.

### ***Copies for Use of the Court***

(7) The parties shall file three copies of their application records and factums for the use of the court.

**CERTIFICATE OF PERFECTION**

**68.05** (1) The applicant shall file with the application record a certificate of perfection, stating that all the material required to be filed by the applicant for the hearing of the application has been filed, and setting out the name, address and telephone number of the solicitor for,

- (a) every party to the proceeding; and
- (b) any person entitled by statute or an order under rule 13.03 (intervention) to be heard on the application,

or, where a party or person acts in person, his or her name, address for service and telephone number.

(2) When the certificate of perfection has been filed, the Registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection.

**DISMISSAL FOR DELAY*****Motion by Respondent***

**68.06** (1) Where the applicant has not,

- (a) delivered an application record and factum within the time prescribed by subrule 68.04(1); or
- (b) filed a certificate of perfection as required by subrule 68.05(1),

the respondent may make a motion to the Registrar of the Divisional Court, on ten days notice to the applicant, to have the application dismissed for delay.

***Notice by Registrar***

(2) Where the applicant has not delivered an application record and factum and filed a certificate of perfection within one year after the application was commenced, the Registrar may serve notice on the applicant that the application will be dismissed for delay unless the applicant delivers an application record and factum and files a certificate of perfection within ten days after service of notice.

***Registrar to Dismiss where Default not Cured***

(3) Where the applicant does not cure the default within ten days after service of a notice under subrule (1) or (2) or such longer period as a judge of the Divisional Court allows, the Registrar shall make an order in Form 68C dismissing the application for delay, with costs.

***Review of Registrar's Dismissal***

(4) A party affected by an order of the Registrar under subrule (3) may make a motion under subrule 61.15(6) to set aside or vary the order.



**RULE 69 MENTAL INCOMPETENCY PROCEEDINGS****REMOVAL TO SUPREME COURT**

**69.01** (1) Where the respondent in a proceeding under the *Mental Incompetency Act* requires the proceeding to be removed into the Supreme Court, he or she shall serve a notice of removal (Form 69A) on the applicant and file it, with proof of service, with the registrar of the District Court where the proceeding was commenced, at least two days before the hearing date of the application.

(2) On the filing of the notice of removal with proof of service, the registrar of the District Court shall forthwith transfer the file to the registrar of the Supreme Court in the same county.

(3) Within ten days after service of the notice of removal on the applicant, the applicant shall obtain from the registrar in the county where the application is to be heard a date for a hearing by a judge of the Supreme Court, or the application may be brought on for hearing as provided in subrule 38.04(3) (urgent application).

(4) Forthwith after obtaining a hearing date, the applicant shall deliver a notice of the date, time and place of the hearing.

**RULE 70 DIVORCE ACTIONS****APPLICATION OF RULES OF CIVIL PROCEDURE**

**70.01** (1) All the Rules of Civil Procedure that apply in an action apply in a divorce action, with necessary modifications, except where the *Divorce Act* (Canada) or rules 70.03 to 70.30 provide otherwise.

(2) The Rules of Civil Procedure, including rules 70.02 to 70.30, do not apply to a divorce action in a county in which there is a Unified Family Court.

**DEFINITION**

**70.02** In rules 70.03 to 70.30,

- (a) “Act” means the *Divorce Act* (Canada);
- (b) “matrimonial offence” means an act constituting a ground for divorce under section 3 of the Act; and
- (c) “undefended action” means a divorce action in which no answer has been delivered or the answer has been withdrawn or struck out.

**PETITION****General**

**70.03** (1) The originating process for the commencement of a divorce action is a petition for divorce (Form 70A).

(2) A certificate of the marriage or of the registration of the marriage shall be filed before a petition is issued, unless the petition indicates that no certificate can be produced.

(3) The party commencing the action shall be called the petitioner and the opposite party shall be called the respondent.

***Joinder of Person Involved in Matrimonial Offence***

(4) Where it is alleged that the respondent spouse was involved in a matrimonial offence with another person, the person’s name, if known, shall be set out in the petition or counterpetition, but the person shall not be made a respondent unless relief is claimed against him or her or the court, on the person’s motion, orders otherwise.

(5) Where the person’s name is subsequently ascertained, the petition or counterpetition shall be amended accordingly, and the person shall be served with a copy of the amended pleading as provided in rule 70.04.

(6) Where it is alleged that the respondent spouse was involved in a matrimonial offence that constitutes a criminal offence for which he or she has been convicted, the name of the other person who was involved in the offence shall not be set out in the petition or counterpetition, notwithstanding subrule (4).

**SERVICE OF PETITION*****Respondent***

**70.04** (1) A petition or amended petition shall be served on the respondent personally, unless the court makes an order under rule 16.04 for substituted service or dispensing with service, and rule 16.03 (alternatives to personal service) does not apply.

***Person Alleged to be Involved in Matrimonial Offence***

(2) A person who is alleged in a petition to have been involved in a matrimonial offence but is not made a respondent shall be served with the petition, unless the court orders otherwise, by any method authorized by Rule 16 for service of an originating process, or by mailing a copy of the petition to the person at his or her last known address.

***Petitioner not to Effect Service***

(3) The petition shall be served by someone other than the petitioner.

***Service Outside Ontario***

(4) A petition may be served outside Ontario without a court order.

***Substituted Service by Advertisement***

(5) Where substituted service of a petition by advertisement in a newspaper is ordered by the court, the advertisement shall be in Form 70B.

**TIME FOR SERVICE OF PETITION**

**70.05** A petition shall be served within six months after it is issued.

**PLEADINGS**

**70.06** (1) In a divorce action, pleadings shall consist of the petition (Form 70A), answer (Form 70C) and reply (Form 70D), if any.

(2) In a counterpetition, pleadings shall consist of the counterpetition (Form 70E or 70F), answer to counterpetition (Form 70G) and reply to answer to counterpetition (Form 70H), if any.

**ANSWER*****Time for Delivery of Answer***

**70.07** (1) A respondent who wishes to oppose a claim made in the petition shall deliver an answer,

- (a) within twenty days after service of the petition, where the respondent is served in Ontario;
- (b) within forty days after service of the petition, where the respondent is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the petition, where the respondent is served anywhere else.

except as provided in subrule (3), 19.01(5) (late delivery of defence) or 70.10(2) (counterpetition against petitioner and non-party).

***Notice of Intent to Defend***

(2) A respondent served with a petition who intends to defend the action may deliver a notice of intent to defend (Form 70I) within the time prescribed for delivery of the answer.

(3) A respondent who delivers a notice of intent to defend within the prescribed time is entitled to ten days, in addition to the time prescribed by subrule (1), within which to deliver an answer.

***Answer by Person Alleged to have been Involved in Matrimonial Offence***

(4) Where it is alleged in a petition that a person who is not a party to the action was involved in a matrimonial offence, the person may, within the time prescribed for delivery of an answer, move to be added as a respondent and for leave to deliver an answer, and the court may make an order accordingly.

**REPLY**

**70.08** A reply, if any, shall be delivered within ten days after service of the answer.

**COUNTERPETITION*****Where Available***

**70.09** (1) A respondent who claims any relief against the petitioner, other than dismissal of the action and costs, shall do so by way of counterpetition.

(2) A respondent who counterpetitions against the petitioner may join as a respondent to the counterpetition any other person, whether a party to the main action or not, who is a necessary or proper party to the counterpetition, subject to subrules 70.03(4), (5) and (6) (joinder of person involved in matrimonial offence).

***Counterpetition to be in Same Document as Answer***

(3) A respondent shall include the counterpetition (Form 70E or 70F) in the same document as the answer and the document shall be entitled an answer and counterpetition.

***Counterpetition to be Issued where Respondent to Counterpetition not Already Party to Main Action***

(4) Where a person who is not already a party to the main action is made a respondent to the counterpetition, the answer and counterpetition,

(a) shall be issued,

(i) within the time prescribed by rule 70.07 for the delivery of an answer in the main action or at any time before the respondent has been noted in default, or

(ii) subsequently with leave of the court; and

(b) shall contain a second title of proceeding showing who is petitioner by counterpetition and who are respondents to the counterpetition.

***Service Outside Ontario***

(5) A counterpetition may be served outside Ontario without a court order.

**TIME FOR DELIVERY OR SERVICE OF ANSWER AND COUNTERPETITION*****Where all Parties are Parties to the Main Action***

**70.10** (1) Where a counterpetition is only against the petitioner, or only against the petitioner and another person who is already a party to the main action, the answer and counterpetition shall be delivered within the time prescribed by rule 70.07 for the delivery of the answer in the main action, or at any time before the respondent has been noted in default.



***Where New Party is Brought In***

(2) Where a counterpetition is against the petitioner and a respondent to the counterpetition who is not already a party to the main action, the answer and counterpetition shall be served, after it has been issued, on the parties to the main action and, together with all the pleadings previously delivered in the main action, on a respondent to the counterpetition who is not already a party to the main action, and shall be filed with proof of service,

- (a) within thirty days after the answer and counterpetition is issued or at any time before the respondent is noted in default; or
- (b) subsequently with leave of the court.

(3) An answer and counterpetition need not be served personally on any person who is a party to the main action, except where a respondent to the counterpetition is also a respondent in the main action and has failed to deliver a notice of intent to defend or an answer in the main action, in which case the respondent shall be served in the manner prescribed by subrule 70.04(1), whether or not the respondent has been noted in default in the main action.

***Where Non-party is Alleged to have been Involved in Matrimonial Offence***

(4) An answer and counterpetition shall also be served, together with the petition, in the manner prescribed by subrule 70.04(2), on every named person who is alleged in the counterpetition to have been involved in a matrimonial offence but is not made a respondent, unless the court orders otherwise.

**AMENDING ANSWER TO ADD COUNTERPETITION**

**70.11** (1) A respondent who has delivered an answer that does not contain a counterpetition and who wishes to counterpetition only against the petitioner or only against the petitioner and another person who is already a party to the main action may amend the answer in accordance with rules 26.02 and 26.03 in order to add the counterpetition, and rule 26.05 (responding to amended pleading) applies to the amended answer and counterpetition.

(2) A respondent referred to in subrule (1) who wishes to counterpetition against the petitioner and another person who is not already a party to the main action may, with leave of the court, have the registrar issue an amended answer and counterpetition, and rule 26.05 (responding to amended pleading) applies to the amended answer and counterpetition.

**ANSWER TO COUNTERPETITION*****By Petitioner and Other Party to Main Action***

**70.12** (1) The petitioner and any other respondent to a counterpetition who is already a party to the main action shall deliver an answer to counterpetition (Form 70G) within twenty days after service of the counterpetition.

(2) Where the petitioner delivers a reply in the main action, the answer to counterpetition shall be included in the same document as the reply and the document shall be entitled a reply and answer to counterpetition.

***By Respondent added by Counterpetition***

(3) A respondent to a counterpetition who is not already a party to the main action shall deliver an answer to counterpetition (Form 70G),

- (a) within twenty days after service of the answer and counterpetition, where the respondent to the counterpetition is served in Ontario;
- (b) within forty days after service of the answer and counterpetition, where the respondent to the counterpetition is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the answer and counterpetition, where the respondent to the counterpetition is served anywhere else,

except as provided in subrule (5) or 19.01(5) (late delivery of defence).

(4) Where a respondent to a counterpetition who is not already a party to the main action is served with a counterpetition and intends to defend the action, he or she may deliver a notice of intent to defend (Form 70I) within the time prescribed for delivery of the answer to counterpetition.

(5) A respondent to a counterpetition who delivers a notice of intent to defend within the prescribed time is entitled to ten days, in addition to the time prescribed by subrule (3), within which to deliver an answer to counterpetition.

#### ***By Person Alleged to have been Involved in Matrimonial Offence***

(6) Where it is alleged in a counterpetition that a person other than a party was involved in a matrimonial offence, the person may, within the time prescribed for the delivery of the answer to counterpetition, move to be added as a respondent to the counterpetition and for leave to deliver an answer to counterpetition, and the court may make an order accordingly.

### **REPLY TO ANSWER TO COUNTERPETITION**

**70.13** A reply to answer to counterpetition (Form 70H), if any, shall be delivered within ten days after service of the answer to counterpetition.

### **FINANCIAL STATEMENTS**

#### ***Where Required***

**70.14** (1) Where a petition contains a claim for maintenance, custody, support or division of property, the petitioner shall file and serve a financial statement (Form 70J) with the petition and the respondent spouse shall deliver a financial statement with the answer.

(2) Where no claim for maintenance, custody, support or division of property is made in the petition, but such a claim is made in the counterpetition, the respondent spouse shall deliver a financial statement with the answer and counterpetition and the petitioner shall deliver a financial statement with the answer to counterpetition.

#### ***Waiver of Financial Statements***

(3) Subrules (1) and (2) do not apply in respect of a claim for maintenance or custody under the Act where both spouses have filed a waiver of financial statements (Form 70K), but the spouses may not waive the obligation to deliver financial statements in respect of a claim under the *Family Law Reform Act* or the *Children's Law Reform Act*.

#### ***Registrar to Refuse Documents Unless Accompanied by Financial Statements***

(4) Where a financial statement is required to be filed or delivered with a petition or counterpetition, or an answer thereto, the registrar shall not accept the petition, counterpetition or answer for issuing or filing without the financial statement.

***Respondent must File Even When Not Defending***

(5) A respondent spouse who does not intend to defend a claim for maintenance, custody, support or division of property shall nevertheless deliver a financial statement within the time prescribed for delivery of an answer or answer to counterpetition, but the failure of the respondent spouse to do so does not prevent the petitioner from setting the action down for trial.

***Motion May be Made to Require Delivery***

(6) Where a respondent spouse fails to deliver a financial statement within the time prescribed for delivery of the answer or answer to counterpetition, the court on motion without notice may make an order requiring the delivery of a financial statement within the time prescribed by the order.

***Particulars of Financial Statement***

(7) Where a financial statement lacks particularity a spouse may demand particulars and if the other spouse fails to supply them within seven days the court may, on such terms as are just,

- (a) order particulars to be delivered within a specified time; or
- (b) strike out the financial statement and order that a new financial statement be delivered within a specified time.

***Sanctions for Failure to Deliver Financial Statement or to Give Particulars***

(8) Where a spouse fails to comply with an order to deliver a financial statement, a new financial statement or particulars,

- (a) the court may dismiss the spouse's action or strike out his or her answer; and
- (b) a judge may make a contempt order against the spouse.

***Cross-examination on Financial Statement***

(9) A spouse may cross-examine the other spouse on his or her financial statement.

(10) A cross-examination on a financial statement may be used,

- (a) on a motion for interim relief; and
- (b) at trial, in the same manner as an examination for discovery.

(11) A spouse who has set the action down for trial or who has consented to the action being placed on a trial list may not cross-examine before trial on the other spouse's financial statement without leave of the court, but is not relieved of the obligation imposed by subrule (12).

***Duty to Correct Financial Statement and Answers on Cross-examination***

(12) Where a spouse who has delivered a financial statement subsequently discovers that any information in the financial statement or answer on cross-examination on it,

- (a) was incorrect or incomplete when made; or
- (b) is no longer correct and complete,

the spouse shall forthwith provide the information in writing to the other spouse, and subrules 31.09(2) and (3) (correcting answers and sanctions for failure to correct) apply, with necessary modifications.



## CHILDREN

### *Rule Applies Where There is a Child*

**70.15** (1) Subrules (2) to (9) apply where there is a child of the marriage within the meaning of section 2 of the Act.

### *Children to be Identified*

(2) The name and birth date of every child of the marriage shall be set out in the petition or counterpetition.

### *Service of Documents on Official Guardian*

(3) The petition or counterpetition and financial statement shall be served on the Official Guardian at Toronto by mail or personally or by an alternative to personal service under rule 16.03 forthwith after service on the respondent spouse.

(4) All other pleadings and financial statements shall be served on the Official Guardian within the time prescribed by the rules for service on the parties.

### *Official Guardian's Report*

(5) The report of the Official Guardian under section 126 of the *Courts of Justice Act, 1984* and the supporting affidavit, if any, shall be served by the Official Guardian, subject to subsection 126(6) of that Act (payment of fees), on

(a) the solicitor for each spouse; and

(b) where a spouse is acting in person, on the spouse,

within sixty days after service on the Official Guardian of the petition or counterpetition, as the case may be, and the Official Guardian shall forthwith file a copy of the report and supporting affidavit, if any, together with proof of service in the office where the petition was issued.

(6) Either spouse may dispute any statement in the report or any supporting affidavit by serving a concise statement of the nature of the dispute on the other spouse and on the Official Guardian at Toronto and by filing it, together with proof of service, within fifteen days after service of the report.

(7) No divorce action shall be tried until,

(a) all disputes have been filed or the time for filing disputes has expired; or

(b) a waiver (Form 70L) of the right to dispute the Official Guardian's report has been filed by the spouses.

(8) A person who made the investigation on which a report is based is liable to be examined only at the trial.

### *Discovery by Official Guardian*

(9) The Official Guardian has the right to discovery in respect of any matter relating to the custody, maintenance or education of or access to a child to whom this rule applies, whether or not the matter is in issue in the action.

## INTERVENTION BY ATTORNEY GENERAL

**70.16** (1) At any time before the granting of a decree *nisi*, the Attorney General, on notice to all parties, may make a motion to a judge for leave to intervene for the purpose of showing why the decree *nisi* should not be granted.



(2) The judge granting leave to intervene shall give such directions with respect to the participation of the Attorney General in the proceeding as are just.

## PLACE OF TRIAL

**70.17** (1) A petitioner shall name in the petition as the place of trial a place where the court normally sits in the county in which either spouse ordinarily resides or, where the petitioner is resident outside Ontario, the county in which the respondent spouse ordinarily resides.

(2) The trial shall be held at the place named in the petition unless an order is made to change the place of trial under rule 46.03 (order changing place of trial).

## TRIAL BEFORE LOCAL JUDGE OR HIGH COURT JUDGE

**70.18** (1) The petitioner, in addition to naming the place of trial, shall specify in the petition whether the action will be set down for trial before a local judge or a High Court judge at the place of trial named in the petition.

(2) The petitioner or a respondent who has delivered an answer may make a motion at any time before the commencement of the trial,

(a) to a High Court judge for an order that the action be tried by a High Court judge instead of a local judge; or

(b) to a local judge for an order that the action be tried by a local judge instead of a High Court judge, but, where the action is defended, the order may be made only on the consent of all parties.

## NOTICE OF LISTING FOR TRIAL IN UNDEFENDED ACTIONS

**70.19** (1) Where the action is undefended and an order is made,

(a) changing the place of trial under rule 46.03; or

(b) transferring the trial under subrule 70.18(2),

the petitioner shall, unless the court orders otherwise, serve on the respondent spouse and file, with proof of service, a notice of listing for trial (Form 70M) forthwith after obtaining the order or after setting the action down, whichever is later.

(2) Subrule (1) applies even though the respondent spouse has been noted in default.

## TRIAL

### *Certificate Respecting Prior Pending Petitions*

**70.20** (1) No divorce action shall be tried until the registrar has received and attached to the trial record a certificate or report issued under the *Divorce Regulations* (Canada) after the petition was filed with respect to prior pending petitions presented by either spouse.

### *Adjournment*

(2) Where a judge grants an adjournment of the trial under subsection 8(1) of the Act before hearing any evidence, a motion for resumption of the trial under subsection 8(2) may be made to any judge.

(3) Where a judge grants an adjournment of the trial under subsection 8(1) of the Act after commencing the hearing of the evidence, a motion for resumption of the trial under subsection 8(2) may be made only to the same judge.

(4) The judge trying a divorce action may adjourn the trial for any reason to such time and place as are just and, in a proper case, may direct that the registrar forthwith give notice to the Attorney General of the proceeding, the state thereof and the reasons of the judge for directing that notice be given.

(5) Where notice is given, the Attorney General may appear by counsel on the adjourned trial and make submissions and otherwise participate in the proceeding to the extent that the judge allows.

## **TRIAL OF UNDEFENDED ACTIONS**

### ***Facts may be Proved by Affidavit***

**70.21** (1) At the trial of an undefended action, the evidence and any information required to enable the court to perform its duties under subsections 8(1) and 9(1) of the Act (reconciliation and bars to divorce) may be presented by affidavit, unless the trial judge orders otherwise.

### ***Counsel and Petitioner Need not Attend***

(2) At the trial of an undefended action where the evidence and information referred to in subrule (1) are to be presented by affidavit, the trial judge may,

- (a) conduct the trial and grant a decree without an appearance by counsel or the petitioner; or
- (b) direct that counsel or the petitioner appear or that oral evidence be presented.

## **REFERENCE TO A FAMILY LAW COMMISSIONER**

**70.22** (1) A judge sitting at Toronto or Ottawa may, on consent of the parties, refer any question or issue arising in the action relating to custody, maintenance or access to a family law commissioner for inquiry and report.

(2) Where a reference is directed under subrule (1), the commissioner shall inquire into the question or issue referred and shall make a report.

(3) The report may be confirmed only on a motion to,

- (a) a High Court judge, where a High Court judge directed the reference;
- (b) a local judge, where a local judge directed the reference; or
- (c) the referring judge, where the order of reference so directs,

and the judge may require the commissioner to give reasons for his or her findings or conclusions and may confirm the report in whole or in part or make such other order as is just.

## **DECREE NISI**

**70.23** (1) In a decree *nisi* (Form 70N), only the names of the spouses shall appear in the title of the proceeding, but where relief has been granted against a respondent who is not the petitioner's spouse that person's name shall be included.

(2) The party to whom a decree *nisi* has been granted shall forthwith serve it on the party against whom it was granted by mailing a copy addressed to the party at his or her last known address, unless the decree absolute is granted at the trial or the trial judge orders otherwise.

**SHOWING CAUSE AFTER DECREE NISI**

**70.24** (1) During the period between the granting of the decree *nisi* and the granting of the decree absolute, the Attorney General or any other person may make a motion to a judge under subsection 13(3) of the Act to show cause why a decree absolute should not be granted.

(2) The notice of motion shall be served on the parties, and on the Attorney General unless he or she is the moving party.

(3) The judge may dismiss the motion, rescind the decree *nisi*, require further inquiry to be made, including the direction of the trial of an issue, and may make such order and give such directions as are just.

**REGISTRAR TO NOTIFY LOCAL REGISTRAR OF APPEAL**

**70.25** On the filing of a notice of appeal from a decree *nisi* of divorce or the making of an order extending the time for such an appeal, the Registrar of the Court of Appeal shall forthwith notify the registrar in the office where the action was commenced.

**DECREE ABSOLUTE*****On Motion by Party to Whom Decree Nisi Granted***

**70.26** (1) The party to whom a decree *nisi* has been granted may move for a decree absolute,

- (a) after the expiration of,
  - (i) the time provided in the decree *nisi*, or
  - (ii) one month from the date of service of the decree *nisi*, whichever is later; or
- (b) at the trial, where the parties have filed a document embodying the agreement and undertaking referred to in subsection 13(2) of the Act.

***How Motion to be Made***

(2) A motion under subrule (1) for a decree absolute after the trial shall be made without notice, to a judge, by filing a notice of motion in the office in which the action was commenced, at any time after the expiration of the period referred to in clause (1)(a).

***Supporting Material***

- (3) The moving party shall file with the notice of motion,
  - (a) the original or a certified copy of the decree *nisi* with proof of service on the party against whom it was granted, unless service was dispensed with; and
  - (b) an affidavit, sworn after the expiration of the period that must intervene before the decree absolute may be granted, stating that,
    - (i) no appeal from the granting of the decree *nisi* of divorce is pending or that any such appeal has been abandoned or dismissed,
    - (ii) no order has been made extending the time for appealing from the decree *nisi* of divorce or, if such an order was made, that the time has expired without an appeal being taken from the granting of the decree *nisi* of divorce,



- (iii) no notice of motion to show cause why the decree *nisi* of divorce should not be made absolute has been filed or served or, if such a notice of motion was filed or served, that the motion was dismissed or abandoned, and
- (iv) the spouses are not reconciled.

***Registrar's Certificate***

(4) When the notice of motion and supporting material have been filed the registrar shall search the court records to ascertain,

- (a) that no appeal from the granting of the decree *nisi* of divorce is pending or that any such appeal has been dismissed or abandoned;
- (b) that no order has been made extending the time for appealing from the decree *nisi* of divorce or, if such an order was made, that the time has expired without an appeal being taken from the granting of the decree *nisi* of divorce; and
- (c) that no notice of motion to show cause why the decree *nisi* of divorce should not be made absolute has been filed or, if such a notice of motion was filed, how it was disposed of,

and shall prepare a registrar's certificate (Form 70O).

***Registrar to Present the Motion***

(5) After preparing the certificate the registrar shall present the notice of motion, the material filed in support and the certificate to a judge, who may grant a decree absolute without an appearance by counsel.

***Adjournment of Motion by Judge***

(6) Where a judge decides that a decree absolute should not be granted in the first instance, the judge shall adjourn the motion and direct that notice of the adjournment be given by the registrar to the party seeking the decree absolute, and may direct that notice of the motion be served on any other person.

***Motion for Decree Absolute by Other Spouse***

(7) Where a party to whom a decree *nisi* has been granted fails to move for a decree absolute within one month from the earliest date on which he or she could have done so, the other spouse may make a motion to a judge for a decree absolute, on notice to the party to whom the decree *nisi* has been granted, and the notice of motion shall be filed in the court office where the action was commenced.

(8) The motion shall be supported by,

- (a) a certified copy of the decree *nisi*, if one has been signed;
- (b) an affidavit, sworn after the expiration of the period referred to in subrule (7), setting out the facts required by clause (3)(b); and
- (c) the registrar's certificate referred to in subrule (4).

(9) Where the decree *nisi* has not been signed, the judge may direct on the hearing of the motion that it be signed and entered.

***Names to Appear in Decree Absolute***

(10) In a decree absolute (Form 70P or 70Q), only the names of the spouses shall appear in the title of the proceeding, but where the decree absolute was granted at trial and grants relief against a respondent who is not the petitioner's spouse that person's name shall be included.



***Registrar to prepare Decree Absolute***

(11) The registrar shall prepare, sign and enter a decree absolute, other than one granted at hearing.

**INTERIM RELIEF*****Time for Service of Notice of Motion***

**70.27** (1) A notice of motion for interim relief in a divorce action may be served at the same time as or at any time after the petition or counterpetition is served.

***Pre-motion Conference***

(2) At the hearing of a motion for interim relief the court may direct a pre-motion conference to consider the possibility of settling any or all of the issues raised by the motion or the action.

(3) The costs of a pre-motion conference shall be assessed as part of the costs of the action, unless, where a judge or master conducts the conference, he or she orders otherwise.

(4) A judge or officer who conducts a pre-motion conference under subrule (2) shall not preside at a motion for interim relief, the trial or a reference in the action.

***Written Proposal for Settlement and Costs of Interim Motion***

(5) In exercising his or her discretion concerning costs, the judge or officer who hears a motion for interim relief shall take into account any written proposal for settlement of the motion or the failure to make such a proposal.

***Failure to Comply with Interim Order***

(6) Where a party fails to comply with an order for interim relief and the court is satisfied that the party is able to comply with the order, the court may postpone the trial of the action or strike out any pleading or affidavit of the party in default.

***Appeal***

(7) Rule 62.01 (appeal from interlocutory order) applies, with necessary modifications, to the procedure on an appeal to a single judge of the Court of Appeal from an order for interim relief made under the Act.

**VARIATION OF FINAL ORDER FOR COROLLARY RELIEF*****To be Done by Application***

**70.28** (1) A person who seeks to vary or rescind an order under section 11 of the Act for maintenance, custody or access, or to obtain such an order after the decree *nisi*, shall do so by notice of application to the Supreme Court.

***Filing of Financial Statement***

(2) Where an application under subrule (1) is in respect of maintenance or custody, the applicant shall file and serve a financial statement (Form 70J) with the notice of application.

(3) A judge may order the respondent in an application under subrule (1) in respect of maintenance or custody to deliver a financial statement (Form 70J) within the time prescribed in the order.

**REGISTRATION OF ORDERS FOR COROLLARY RELIEF*****Orders from Other Provinces***

**70.29** (1) Where an order has been made by any other superior court in Canada under section 10 or 11 of the Act, it may be registered under section 15 of the Act by filing a certified copy with the local registrar at Toronto, and the order shall then be entered as an order of the court.

(2) The certified copy of the order may be filed with the local registrar at Toronto by forwarding it to him or her by ordinary mail, accompanied by a written request that it be registered under section 15 of the Act.

***Filing Orders in Family Courts***

(3) An order under section 10 or 11 of the Act that was made in Ontario or registered in accordance with subrule (1) may be filed with and enforced by the Provincial Court (Family Division) or the Unified Family Court under Part II of the *Family Law Reform Act*.

**COSTS**

**70.30** On the assessment of costs in a divorce action, the action shall be treated as undefended and costs assessed in accordance with Tariff B, unless the trial judge orders otherwise.

**RULE 71 FAMILY LAW PROCEEDINGS****APPLICATION OF THE RULE**

**71.01** Rules 71.02 to 71.13 apply to proceedings under Part I, II and III of the *Family Law Reform Act* and Part III of the *Children's Law Reform Act*.

**DEFINITIONS**

**71.02** In rules 71.03 to 71.13,

- (a) "applicant" includes a plaintiff;
- (b) "respondent" includes a defendant; and
- (c) "responding document" means a statement of defence, defence to counterclaim or affidavit in opposition to an application.

**HOW COMMENCED**

**71.03** (1) A proceeding under the *Family Law Reform Act* or the *Children's Law Reform Act* shall be commenced by an originating process or by a counterclaim or counterpetition against a person who is already a party to the main action.

(2) Where the Ministry of Community and Social Services or a municipality is an applicant for an order for the support of a dependant, it shall serve the originating process on the dependant.

**FINANCIAL STATEMENTS*****Applicant's Financial Statement***

**71.04** (1) Where an order is sought under section 4 (division of family or non-family assets), 18 (support) or 21 (variation of support) of the *Family Law Reform Act*, or for custody under the *Children's Law Reform Act*, a financial statement (Form 70J) shall be filed and served with the originating process, together with a notice to file financial statement (Form 71A).

(2) Where the originating process is a notice of action, the financial statement shall be delivered with the statement of claim.

***Respondent's Financial Statement***

(3) A respondent served with the applicant's financial statement shall deliver a financial statement with his or her responding document.

(4) A respondent who does not intend to defend the proceeding shall nevertheless deliver a financial statement within the time prescribed for the delivery of his or her responding document, but a respondent's failure to do so does not prevent the applicant from bringing the proceeding on for hearing.

***Motion to Require Respondent to Deliver Financial Statement***

(5) Where a respondent fails to comply with a notice to file financial statement, the applicant may move without notice for an order requiring the delivery of a financial statement within the time prescribed by the order.

***Registrar to Refuse Documents Unless Accompanied by Financial Statements***

(6) Where a financial statement is required to be filed or delivered with an originating process, statement of claim or responding document, the registrar shall not accept

the originating process, statement of claim or responding document for issuing or filing without the financial statement.

***Particulars of Financial Statement***

(7) Where a financial statement lacks particularity a party may demand particulars and if the other party fails to supply them within seven days, the court may, on such terms as are just,

- (a) order particulars to be delivered within a specified time; or
- (b) strike out the financial statement and order that a new financial statement be delivered within a specified time.

***Sanctions for Failure to Deliver Financial Statement or to Give Particulars***

(8) Where a party fails to comply with an order to deliver a financial statement, a new financial statement or particulars,

- (a) the court may dismiss the party's proceeding or strike out his or her responding document; and
- (b) a judge may make a contempt order against the party.

***Cross-examination on Financial Statement***

(9) A party may be cross-examined on his or her financial statement.

(10) A cross-examination on a financial statement may be used,

- (a) on a motion for interim relief; and
- (b) at the hearing, in the same manner as an examination for discovery.

(11) In an action or in an application where the trial of an issue has been directed, a party who has set the action or issue down for trial or who has consented to the action or issue being placed on a trial list may not cross-examine on the other party's financial statement without leave of the court, but is not relieved of the obligation imposed by subrule (12).

***Duty to Correct Financial Statement and Answers on Cross-Examination***

(12) Where a party who has delivered a financial statement subsequently discovers that any information in the financial statement or answer on cross-examination on it,

- (a) was incorrect or incomplete when made; or
- (b) is no longer correct or complete,

the party shall forthwith provide the information in writing to the other party, and subrules 31.09(2) and (3) (correcting answers and sanctions for failure to correct answers) apply, with necessary modifications.

***Divorce Action***

(13) Where a claim under the *Family Law Reform Act* or the *Children's Law Reform Act* is made in a divorce action, the obligations of the spouses respecting financial statements are governed by rule 70.14.

**PLACE OF HEARING**

**71.05** (1) Where a proceeding is,

- (a) under the *Children's Law Reform Act* or under that Act and the *Family Law Reform Act*, the applicant shall name as the place of hearing a place where the



court normally sits in the county in which a child in respect of whom the proceeding is brought ordinarily resides; or

- (b) under the *Family Law Reform Act* only, the applicant shall name as the place of hearing a place where the court normally sits in a county in which any of the parties ordinarily reside.

(2) Where a claim under the *Family Law Reform Act* or the *Children's Law Reform Act* is made in a divorce action, the place of trial is governed by rule 70.17 and subrule (1) does not apply.

(3) The hearing shall be held at the place named under subrule (1) unless an order is made under rule 46.03 to change the place of hearing, and for the purpose of changing the place of hearing an application shall be treated as an action.

## REFERENCE TO A FAMILY LAW COMMISSIONER

**71.06** Rule 70.22 (reference to family law commissioner) applies, with necessary modifications, to any question or issue arising under the *Family Law Reform Act* or the *Children's Law Reform Act*.

## INTERIM RELIEF

**71.07** Rule 70.27 (interim relief) applies, with necessary modifications, to a motion for interim relief in a proceeding under the *Family Law Reform Act* or the *Children's Law Reform Act*.

## PROCEEDING TRANSFERRED FROM PROVINCIAL COURT (FAMILY DIVISION)

**71.08** (1) Where a proceeding is transferred from the Provincial Court (Family Division) to the District Court or the Supreme Court under subsection 2(2) of the *Family Law Reform Act* or section 67 of the *Children's Law Reform Act*, the proceeding shall continue without duplication of any steps taken before the transfer unless the court to which the proceeding is transferred directs otherwise.

(2) The court to which a proceeding is transferred may, on motion, give directions for the conduct of the proceeding.

## APPEAL FROM PROVINCIAL COURT (FAMILY DIVISION)

### *Commencement of Appeal*

**71.09** (1) An appeal from the Provincial Court (Family Division) to the District Court under section 36 of the *Family Law Reform Act* or section 76 of the *Children's Law Reform Act* shall be commenced by serving a notice of appeal (Form 71B) on all parties whose interests are affected by the appeal, within thirty days after the date of the order appealed from.

### *Filing Notice of Appeal*

(2) The notice of appeal, with proof of service, shall be filed in the office of the local registrar of the District Court within five days after service.

### *Grounds to be Stated*

(3) The notice of appeal (Form 71B) shall state the relief sought and shall set out the grounds of appeal, and no other grounds may be argued except by leave of the court.

***Appeal Record***

(4) The appellant shall, at least ten days before the hearing of the appeal, file with the local registrar of the District Court and serve on each respondent an appeal record containing, in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the notice of appeal;
- (c) a copy of the order appealed from and the reasons, if any;
- (d) a transcript of the evidence; and
- (e) such other material that was before the court appealed from as is necessary for the hearing of the appeal,

and a factum consisting of a concise statement, without argument, of the facts and law relied on by the appellant.

(5) Each respondent shall, at least three days before the hearing of the appeal, file with the local registrar and serve on every other party,

- (a) any further material that was before the court appealed from and is necessary for the hearing of the appeal; and
- (b) a factum consisting of a concise statement, without argument, of the facts and law relied on by the respondent.

***Dispensing with Compliance***

(6) A judge of the District Court may, before or at the hearing of the appeal, dispense with compliance with subrule (4) or (5) in whole or in part.

**WARRANT FOR ARREST**

**71.10** A warrant for the arrest of a debtor or respondent referred to in section 24 of the *Family Law Reform Act* shall be in Form 71C.

**RECOGNIZANCE**

**71.11** A recognizance required by an order made under section 34 of the *Family Law Reform Act* or section 36 of the *Children's Law Reform Act* shall be in Form 71D and shall be entered into before the registrar or such other officer as a judge directs.

**RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS**

**71.12** On receipt by the registrar of a written request under subsection 2(3) of the *Reciprocal Enforcement of Maintenance Orders Act, 1982*, the registrar shall deem a final order of the court within the meaning of clause 1(f) of that Act that is referred to in the request to be a registered order under subsection 2(3) of that Act and shall issue a certificate accordingly.

**REQUEST BY EXTRA-PROVINCIAL TRIBUNAL FOR EVIDENCE IN CUSTODY CASES*****Issuing Summons to Give Evidence***

**71.13** (1) Where the Attorney General refers a request of an extra-provincial tribunal to the court under section 34 of the *Children's Law Reform Act*, the registrar shall

issue a summons in Form 71E requiring the person named in the request to produce or give evidence in accordance with the request.

***Service of Summons***

(2) The summons and a copy of the request of the extra-provincial tribunal and any supporting material that accompanied the request shall be served on the person named in the request, personally and not by an alternative to personal service, at least five days before he or she is required to produce or give evidence.

(3) Where the person named in the request is not a party to the proceeding before the extra-provincial tribunal and the summons requires the person to give oral evidence, attendance money calculated in accordance with Tariff A shall be paid or tendered to the person when the summons is served.

(4) A copy of the summons shall be served on the Attorney General within the time prescribed by subrule (2).

***Affidavit Evidence***

(5) Where the summons does not require the person to give oral evidence, the person may file with the registrar the evidence required, verified by the person's affidavit.

***Oral Evidence***

(6) Where the summons requires the person to give oral evidence, the person shall attend before a judge or officer of the court, as set out in the summons, to be examined in accordance with the summons.

***Evidence to be Sent to Extra-Provincial Tribunal***

(7) The registrar shall send to the extra-provincial tribunal a certified copy of evidence produced or given under this rule.

***Sanctions for Disobeying Summons***

(8) Subrules 53.04(7) and (8) apply, with necessary modifications, to a person who after having been served in accordance with subrules (2) and (3) fails to comply with the summons.

**RULE 72 CHILD WELFARE ACT APPEALS****DEFINITION**

**72.01** In rules 72.02 and 72.03 “Act” means the *Child Welfare Act*.

**APPEAL FROM PROVINCIAL COURT (FAMILY DIVISION)*****Commencement of Appeal***

**72.02** (1) An appeal from the Provincial Court (Family Division) to the District Court under section 43 or 84 of the Act shall be commenced by serving a notice of appeal (Form 71B), within thirty days after the date of the decision appealed from,

- (a) on the clerk of the Provincial Court (Family Division) in the county or district in which the proceeding was heard;
- (b) on all other persons entitled to appeal the decision; and
- (c) in the case of an appeal under section 43 of the Act, on all other persons entitled to notice of a hearing under subsection 28(7) of the Act who appeared at the hearing.

***Service of Notice of Appeal***

(2) Service under subrule (1) may be made by any method authorized by Rule 16 or by mailing a copy of the notice of appeal to the person to be served, at his or her last known address.

***Filing Notice of Appeal***

(3) The notice of appeal, with proof of service, shall be filed in the office of the local registrar of the District Court within five days after service.

***Grounds to be Stated***

(4) The notice of appeal (Form 71B) shall state the relief sought and shall set out the grounds of appeal, and no other grounds may be argued except by leave of the court.

***Appeal Record***

(5) The record on the appeal shall be the record prepared for the purpose of the appeal under the rules of the Provincial Court (Family Division) by the clerk of the court and sent by him or her for filing with the local registrar of the District Court and shall contain, in the following order,

- (a) a table of contents;
- (b) a copy of the notice of appeal;
- (c) a copy of the decision appealed from and the reasons for the decision, if any;
- (d) a transcript of the evidence; and
- (e) such other material that was before the court appealed from as is necessary for the hearing of the appeal.

***Hearing Date***

(6) The appeal shall be heard within thirty days after the filing of the appeal record with the local registrar of the District Court.



*Dispensing with Compliance*

(7) Subject to subsections 43(7) and 84(5) (extension of time for appeal) of the Act, a judge of the District Court may, before or at the hearing of the appeal, dispense with compliance with this rule in whole or in part.

**APPEAL FROM UNIFIED FAMILY COURT**

**72.03** (1) Rules 72.01 and 72.02 apply, with necessary modifications, to an appeal under section 43 or 84 of the Act from the Unified Family Court to the High Court as provided in subsection 46(3) of the *Courts of Justice Act, 1984*.

(2) The appeal shall be heard at Toronto or any other place where a judge of the High Court is available to hear motions.

**RULE 73 PAYMENT INTO AND OUT OF COURT****DEFINITION**

**73.01** In rules 73.02 to 73.05, “accountant” means,

- (a) where money is to be paid into or out of the Supreme Court, the Accountant of the Supreme Court; or
- (b) where money is to be paid into or out of the District Court, the local registrar of the court.

**PAYMENT INTO COURT**

**73.02** (1) A person who seeks to pay money into court shall file with the accountant or, where the payment is to be made into the Supreme Court outside Toronto, with the local registrar,

- (a) a requisition for payment into court that refers to any statutory provision or rule that authorizes the payment into court; and
- (b) a copy of any order, report, offer to settle or acceptance of offer under which the money is payable.

(2) On receiving the material referred to in subrule (1), the accountant or registrar shall provide the party with a direction to receive the money addressed to the bank into which the money is to be paid.

(3) Where the direction is obtained from a local registrar in a Supreme Court proceeding, the registrar shall forthwith send to the accountant the material filed under subrule (1).

(4) The party paying the money into court shall pay it into an account in the name of the accountant in a chartered bank, in accordance with the direction.

(5) On receiving the money, the bank shall give a receipt to the party paying the money in and shall forthwith send a copy of the receipt to the accountant.

(6) A party paying into court under an offer to settle or an acceptance of offer shall forthwith serve a notice of payment into court (Form 73A) on every interested party, but the notice shall not be filed.

**PAYMENT OUT OF COURT*****Authority for Payment Out***

**73.03** (1) Money may be paid out of court only in accordance with an order or report, or on consent under subrule (4).

***Payment Out under Order or Report***

(2) A party who seeks payment of money out of court in accordance with an order or report shall file with the accountant,

- (a) a requisition for payment out;
- (b) a certified copy of the order or report, unless one has already been filed with the accountant; and
- (c) an affidavit stating,
  - (i) in the case of a report, that the report has been confirmed and the manner of confirmation,

- (ii) in the case of an order, that the time prescribed for an appeal has expired and no appeal is pending,

unless such an affidavit has already been filed with the accountant,

and the accountant shall then pay the money out in accordance with the order or report.

(3) Where the Official Guardian or the Public Trustee seeks payment out in accordance with an order or report, he or she may file one requisition dealing with more than one proceeding and need not file the affidavit referred to in clause (1)(c).

***Payment Out on Consent***

(4) A party who seeks payment out of court, on consent, of money paid in under an offer to settle or an acceptance of offer or as security for costs shall file with the accountant,

- (a) a requisition for payment out;
- (b) the consent of all parties or their solicitors; and
- (c) an affidavit stating that all parties have consented to the payment and that neither the party who paid the money into court nor the party to whom it is to be paid is under disability,

and the accountant shall then pay the money out to the party in accordance with the consent.

***Payment Out of Interest***

(5) Money paid out of court under subrule (2) or (4) shall be paid out with accrued interest, if any, unless the order, report or consent provides otherwise.

***Consent by Insurer on Behalf of Party***

(6) Where the insurer of a party has paid money into court on behalf of the party and an affidavit setting out the relevant facts is filed with the accountant, the consent required by clause (4)(b) may be given by the insurer on behalf of the party and, where the party is entitled to payment out, the money may be paid out to the insurer.

***Minor Attaining Age of Majority***

(7) Money in court to which a party is entitled under an order or report when the party attains the age of majority may be paid out to the party on filing with the accountant,

- (a) a requisition for payment out; and
- (b) an affidavit proving the identity of the party and that the party has attained the age of majority.

***Payment Directly to Solicitor***

(8) Where money has been paid into court as security for costs or an order has been made for payment of costs out of money in court, the money may be paid out to the solicitor for the party entitled, on filing with the accountant the material required by subrule (2) or (4) and the affidavit of the party stating that he or she consents to payment of the money directly to the solicitor rather than to the party.

***Payment to Personal Representative***

(9) Where money or securities in court are to be paid out or transferred to a person named in an order or report who has died, the money or securities may be paid or trans-

ferred to the deceased person's personal representative on proof to the satisfaction of the accountant of the person's death and of the personal representative's authority.

***Party under Disability***

(10) An order for payment out of court of money in court to the credit of a person under disability may be obtained on motion to a judge by or on notice to the Official Guardian, unless the Public Trustee is committee of the person's estate, in which case the motion shall be made by or on notice to the Public Trustee.

(11) A motion under subrule (10), other than a motion made by the Official Guardian or the Public Trustee, shall be supported by an affidavit in Form 73B.

(12) A motion under subrule (10) by the Official Guardian or the Public Trustee may be made without notice unless the court orders otherwise.

(13) In an order under subrule (10), the judge may fix the costs of the moving party and direct that they be paid out of the money in court directly to the moving party's solicitor.

(14) Where an order is made under subrule (10) for maintenance of a minor, the Official Guardian shall, on request of the moving party, obtain the cheque from the accountant and send it without charge to the moving party.

**DISCHARGE OF A MORTGAGE**

**73.04** (1) A person entitled to the discharge of a mortgage held by the accountant may leave with the accountant the required discharge with a request that it be executed.

(2) Where the accountant is satisfied that the money secured by the mortgage has been paid in full and that the discharge is in proper form, the accountant shall execute the discharge.

(3) After executing the discharge, the accountant shall hand over all documents that relate to the mortgage in return for a receipt for the documents and shall assign any policy of insurance in respect of the mortgaged property to the person entitled to the discharge or as the person directs in writing.

**STOP ORDER**

**73.05** (1) On motion without notice in a proceeding or, where there is no proceeding pending, on application to the Supreme Court without notice by a person who claims to be entitled to money or securities held or to be held in the future by the accountant for the benefit of another person, the court may make a stop order (Form 73C) directing that the money or securities shall not be dealt with except on notice to the moving party or applicant.

(2) On a motion or application for a stop order, the moving party or applicant shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to any person for which the moving party or applicant ought to compensate the person.

(3) A person who has obtained an order under subrule (1) may make a motion on notice to all interested parties for an order for payment out.



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FORM 4A  
GENERAL HEADING OF DOCUMENTS - ACTIONS

*(Court file no.)*

SUPREME COURT OF ONTARIO  
(or DISTRICT COURT OF ONTARIO)

B E T W E E N:

*(name)*

Plaintiff

and

*(name)*

Defendant

*(Title of document)*

*(Text of document)*

*(For the title of the proceeding in the case of a,*

- (a) counterclaim against a person who is not already a party to the main action, follow Form 27B;*
- (b) third or subsequent party claim in an action, follow Form 29A in all documents in the main action and the third or subsequent party action;*
- (c) garnishment, follow Form 60G;*
- (d) appeal to an appellate court, follow Form 61B;*
- (e) mortgage action in which defendants are added on a reference, follow Form 64N;*
- (f) divorce action, substitute "petitioner" for "plaintiff" and "respondent" for "defendant";*
- (g) counterpetition in a divorce action against a person who is not already a party, follow Form 70F; or*
- (h) appeal to the District Court, follow Form 71B.)*

## FORM 4B

## GENERAL HEADING OF DOCUMENTS - APPLICATIONS

*(Court file no.)*

SUPREME COURT OF ONTARIO  
*(or DISTRICT COURT OF ONTARIO)*

B E T W E E N:

*(name)*

Applicant

and

*(name)*

Respondent

APPLICATION UNDER *(statutory provision or rule under which  
the application is made)*

*(Title of document)*

*(Text of document)*

*(For the title of the proceeding in an appeal to an appellate court,  
follow Form 61B; in an appeal to the District Court, follow Form 71B.)*

BACKSHEET

(Short title of proceeding)

(Court file no.)

(Name of court)

PROCEEDING COMMENCED AT (place)

(Title of document)

(Name, address and telephone  
number of solicitor or  
party)

## FORM 4D

## AFFIDAVIT

*(General heading)*

## AFFIDAVIT

I, *(full name of deponent)*, of the *(City, Town, etc.)* of ..... in the *(County, Regional Municipality, etc.)* of ..... *(where the deponent is a party or the solicitor, officer, director, member or employee of a party, set out the deponent's capacity)*, MAKE OATH AND SAY (or AFFIRM):

1. *(Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.)*

Sworn (or Affirmed) before me at the *(City, Town, etc.)* of ..... in the *(County, Regional Municipality, etc.)* of ....., on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as may be)*

\_\_\_\_\_  
*(Signature of deponent)*



## FORM 4E

## REQUISITION

*(General heading)*

## REQUISITION

TO THE LOCAL REGISTRAR at *(place)*

I REQUIRE *(Set out a concise statement of what is sought and include all particulars necessary for the registrar to act. Where what is sought is authorized by an order, refer to the order in the requisition and attach a copy of the entered order. Where an affidavit or other document must be filed with the requisition, refer to it in the requisition and attach it.)*

*(Date)*

*(Name, address and telephone  
number of solicitor or person  
filing requisition)*

*(The following are examples of different kinds of requisition.)*

*(Simple requisition)*

I REQUIRE a certified copy of the *(identify document by nature and date)*.

I REQUIRE an order of transfer transferring this application for a hearing before a High Court judge.

*(Order attached)*

I REQUIRE, in accordance with the order dated *(date)*, a copy of which is attached, a commission authorizing the taking of evidence before the commissioner named in the order and a letter of request.

I REQUIRE, in accordance with the order dated *(date)*, a copy of which is attached, a certificate of pending litigation in respect of the land described in the statement of claim.

*(Affidavit attached)*

I REQUIRE an order to continue this action with *(name)* as plaintiff and *(name)* as defendants. An affidavit stating that the defendant *(name)* has reached the age of majority is attached.

## FORM 4F

## NOTICE OF CONSTITUTIONAL QUESTION

*(General heading)*

## NOTICE OF CONSTITUTIONAL QUESTION

The *(identify party)* intends to question the constitutional validity *(or applicability)* of *(identify the particular provisions)* in an action *(or motion, application, appeal or as may be)* to be heard on *(day)*, *(date)*, at *(time)*, at *(address of court house)*.

The following are the material facts giving rise to the constitutional question: *(Set out concisely the material facts that relate to the constitutional question. Where appropriate, attach pleadings or reasons for decision.)*

The following is the legal basis for the constitutional question: *(Set out concisely the legal basis for each question, identifying the nature of the constitutional principles to be argued.)*

*(Date)**(Name, address and telephone number of solicitor or party)*

TO The Attorney General of Ontario  
Constitutional Law Branch  
17th Floor  
18 King Street East  
Toronto, Ontario M5C 1C5

The Attorney General of Canada  
Justice Building  
239 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
*(or P.O. Box 57  
Suite 2400  
Toronto Dominion Bank Tower  
Toronto, Ontario  
M5K 1E7)*

*(Names and addresses of solicitors  
for all other parties and of all  
other parties acting in person)*

*(This notice must be served at least ten days before the question is to be argued.)*

## FORM 7A

## REQUEST FOR APPOINTMENT OF LITIGATION GUARDIAN

*(General heading)*

## REQUEST FOR APPOINTMENT OF LITIGATION GUARDIAN

THE PLAINTIFF *(or as may be)* BELIEVES THAT YOU ARE UNDER A LEGAL DISABILITY. As a party under disability, you must have a litigation guardian appointed by the court to act on your behalf in defending this proceeding.

YOU ARE REQUIRED to have some proper person make a motion to this court forthwith to be appointed as your litigation guardian.

IF YOU FAIL TO DO SO WITHIN TEN DAYS after service of this request, the plaintiff *(or as may be)* may move without further notice to have the court appoint a litigation guardian to act on your behalf.

*(Date)*

*(Name, address and telephone  
number of solicitor or party)*

TO: *(Name and address of  
party under disability)*

## RULES OF CIVIL PROCEDURE

## FORM 7B

ORDER TO CONTINUE  
(MINOR REACHING AGE OF MAJORITY)*(General heading)**(Court seal)*

## ORDER TO CONTINUE

On the requisition of *(identify party)* and on reading the affidavit of *(name)*, filed, which states that the minor *(name of party)* reached the age of majority on *(date)*,

IT IS ORDERED that this proceeding continue by *(or against)* *(name of party)* without a litigation guardian and that the title of the proceeding be amended accordingly in all documents issued, served or filed after the date of this order.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_



## FORM 8A

## NOTICE TO ALLEGED PARTNER

*(General heading)*

## NOTICE TO ALLEGED PARTNER

YOU ARE ALLEGED TO HAVE BEEN A PARTNER on *(date)*  
*(or during (period))* in the partnership of *(firm name)*  
named as a party to this proceeding.

IF YOU WISH TO DENY THAT YOU WERE A PARTNER at  
any material time, you must defend this proceeding  
separately from the partnership, denying that you were  
a partner at the material time. If you fail to do so,  
you will be deemed to have been a partner on the date  
*(or during the period)* set out above.

AN ORDER AGAINST THE PARTNERSHIP MAY BE ENFORCED  
AGAINST YOU PERSONALLY if you are deemed to have been a  
partner, if you admit that you were a partner or if the  
court finds that you were a partner at the material time.

*(Date)*

*(Name, address and telephone  
number of plaintiff's solicitor  
or plaintiff)*

TO *(Name and address of  
alleged partner)*

## FORM 11A

ORDER TO CONTINUE  
(TRANSFER OR TRANSMISSION OF INTEREST)*(General heading)**(Court seal)*

## ORDER TO CONTINUE

On the requisition of *(identify party or person)* and on reading the affidavit of *(name)*, filed, which indicates that on *(date)*, *(recite the details of the transfer or transmission of interest or liability)*,

IT IS ORDERED that this proceeding continue with *(name)* as plaintiff *(or applicant)* and *(name)* as defendant *(or respondent)* and that the title of the proceeding be amended accordingly in all documents issued, served or filed after the date of this order.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

A party who wishes to set aside or vary this order must make a motion to do so forthwith after the order comes to his or her attention.

Where a transmission of interest occurs by reason of bankruptcy, leave of the bankruptcy court may be required under section 49 of the *Bankruptcy Act* (Canada) before the proceeding may continue.

## FORM 14A

## STATEMENT OF CLAIM (GENERAL)

*(General heading)**(Court seal)*

## STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Where the claim made is for money only, include the following:)*

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$..... for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_

TO *(Name and address  
of each defendant)*

## CLAIM

1. The plaintiff claims: *(State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claim.)*

*(Where the statement of claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)*

The plaintiff proposes that this action be tried at *(place)*.

*(Date of issue)*

*(Name, address and telephone  
number of solicitor or plaintiff)*



## FORM 14B

## STATEMENT OF CLAIM (MORTGAGE ACTION)

*(General heading)**(Court seal)*

## STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

*(Where payment of the mortgage debt is claimed, add:)*

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$..... for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Form 14B p.2  
(Foreclosure action)

#### REQUEST TO REDEEM

Whether or not you serve and file a statement of defence, you may request the right to redeem the mortgaged property by filing a request to redeem (Form 64A) in this court office within the time for serving and filing your statement of defence. If you do so, you will be entitled to seven days notice of the taking of the account of the amount due to the plaintiff, and to sixty days from the taking of the account within which to redeem the mortgaged property.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question, you may file a request to redeem, which must contain particulars of your claim verified by an affidavit, and you will be entitled to redeem only if your claim is not disputed or, if disputed, is proved on a reference.

#### REQUEST FOR SALE

If you do not serve and file a statement of defence, you may request a sale of the mortgaged property by filing a request for sale (Form 64F) in this court office within the time for serving and filing your statement of defence. If you do so, the plaintiff will be entitled to obtain a judgment for sale with a reference and you will be entitled to notice of the reference.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question and you do not serve and file a statement of defence and do not file a request to redeem, you may file a request for sale which must contain particulars of your claim verified by an affidavit, and must be accompanied by a receipt showing that \$250 has been paid into court as security for the costs of the plaintiff and of any other party having carriage of the sale.

#### DEFAULT JUDGMENT

IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE,  
JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local registrar  
Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

TO (Name and address of each  
defendant)

Form 14B p.2  
(Sale action)

REQUEST TO REDEEM

Whether or not you serve and file a statement of defence, you may request the right to redeem the mortgaged property by filing a request to redeem (Form 64A) in this court office within the time for serving and filing your statement of defence. If you do so, you will be entitled to seven days notice of the taking of the account of the amount due to the plaintiff, and to sixty days from the taking of the account within which to redeem the mortgaged property.

DEFAULT JUDGMENT

IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE,  
JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

TO *(Name and address of each  
defendant)*

*(Subsequent encumbrancers are not to be named as defendants in the  
statement of claim in a sale action.)*

## RULES OF CIVIL PROCEDURE

Form 14B p.3

## CLAIM

## 1. The plaintiff claims:

*(foreclosure)*

- (a) that the equity of redemption in the property secured by the mortgage mentioned below be foreclosed;

*(or)**(sale)*

- (a) that the property secured by the mortgage mentioned below be sold and the proceeds of sale applied towards the amount due under the mortgage, and payment to the plaintiff by the defendant *(name of defendant against whom payment of any deficiency is claimed)* personally of any deficiency if the sale proceeds are not sufficient to pay the amount found due to the plaintiff;

*(possession)*

- (b) possession of the mortgaged property;

*(payment of mortgage debt)*

- (c) payment by the defendant *(name of defendant against whom payment of the mortgage debt is claimed)* of the sum of \$..... *(from paragraph 5 below)* now due under the mortgage together with interest at the rate of *(mortgage rate)* per cent per year until judgment;

*(interest)*

- (d) post-judgment interest in accordance with the *Courts of Justice Act* *(or where the mortgage provides for interest after judgment at the mortgage rate, substitute: post-judgment interest at the rate of (mortgage rate) per cent per year in accordance with the mortgage);* and

*(costs)*

- (e) the costs of this action *(on a solicitor and client basis if the mortgage so provides)*.



Form 14B, p.4

2. The plaintiff's claim is on a mortgage dated *(date)*, made between *(name of mortgagor)* and *(name of mortgagee)*, and registered *(give particulars of registration and of any assignment of the mortgage)*, under which the defendant *(or as may be)* mortgaged the property described below for a term of ..... years securing the sum of \$..... and interest on that sum at the rate of ..... per cent per year. The mortgage provides for payment of principal and interest as follows: *(Set out terms of payment. Add a reference to provisions in the mortgage for solicitor and client costs and post-judgment interest if applicable.)*

3. *(Where a claim for payment is made under section 19 of the Mortgages Act against a person other than the original mortgagor, add:)* The defendant *(name)* became liable under section 19 of the Mortgages Act to pay the amount of the mortgage debt to the plaintiff by reason of *(set out particulars of transfer of the mortgaged property from the original mortgagor to this defendant)*.

4. Default in payment of principal and interest *(or as may be)* occurred on *(date)*, and still continues.

5. There is now due:

(a) for principal	\$.....
(b) for taxes paid	\$.....
(c) for premiums of insurance paid	\$.....
(d) for maintenance costs paid	\$.....
(e) for heating costs paid	\$.....
(f) for utility costs paid	\$.....
<i>(add any other costs in similar fashion)</i>	
(g) for interest <i>(set out particulars)</i>	\$.....
Total now due:	\$.....

The defendant *(name)* is liable to pay these sums and subsequent interest at the rate of ..... per cent per year.

6. The following is a description of the mortgaged property: *(Set out description sufficient for registration. For Land Titles land, include the parcel number.)*

*(In a foreclosure action where one or more subsequent encumbrancers are named as defendants, add:)*

Form 14B p.5

7. The defendant (*name*) has been made a party to this action as a subsequent encumbrancer.

*(Where the statement of claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of the service.)*

The plaintiff proposes that this action be tried at (*place*).

(*Date*)

(*Name, address and telephone  
number of plaintiff's solicitor  
or plaintiff*)

## FORM 14C

## NOTICE OF ACTION

*(General heading)**(Court seal)*

## NOTICE OF ACTION

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Where the claim made is for money only, include the following:)*

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$..... for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date \_\_\_\_\_

 Issued by \_\_\_\_\_  
 Local registrar

 Address of  
 court office  
 \_\_\_\_\_  
 \_\_\_\_\_

TO *(Name and address of  
 each defendant)*

## CLAIM

The plaintiff's claim is for *(set out a short statement of the nature of the plaintiff's claim)*.

*(Date of issue)*

*(Name, address and telephone number of solicitor or plaintiff)*



## FORM 14D

STATEMENT OF CLAIM  
(ACTION COMMENCED BY NOTICE OF ACTION)*(General heading)*

## STATEMENT OF CLAIM

Notice of action issued on *(date)*

1. The plaintiff claims: *(State here the precise relief claimed).*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claim.)*

*(Where the statement of claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)*

The plaintiff proposes that this action be tried at *(place)*.

*(Date)*

*(Name, address and telephone number  
of solicitor or plaintiff)*

## FORM 14E

## NOTICE OF APPLICATION

*(General heading)**(Court seal)*

## NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before *(insert a High Court judge, a local judge of the High Court, a District Court judge or as may be)* on *(day)*, *(date)*, at *(time)*, at *(address of court house)*.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_TO *(Name and address of  
each respondent)*

Form 14E, p.2

## APPLICATION

1. The applicant makes application for: *(State here the precise relief claimed.)*

2. The grounds for the application are: *(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on.)*

3. The following documentary evidence will be used at the hearing of the application: *List the affidavits or other documentary evidence to be relied on.)*

*(Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service.)*

*(Date of issue)*

*(Name, address and telephone number of solicitor or applicant)*

## FORM 16A

## ACKNOWLEDGMENT OF RECEIPT CARD

*(General heading)*

TO *(full name)*

You are served by mail with the documents enclosed with this card in accordance with the Rules of Civil Procedure.

You are requested to sign the acknowledgment below and mail this card immediately after you receive it. If you fail to do so, the documents may be served on you in another manner and you may have to pay the costs of service.

## ACKNOWLEDGMENT OF RECEIPT

I ACKNOWLEDGE that I have received a copy of the following documents: *(To be completed in advance by the sender of the documents. Include sufficient particulars to identify each document.)*

Signature of person served

*(The reverse side of this card must bear the name and address of the sender and the required postage.)*



## FORM 16B

## AFFIDAVIT OF SERVICE

*(General heading)*

## AFFIDAVIT OF SERVICE

I, *(full name)*, of the *(City, Town, etc.)* of ....., in the *(County, Regional Municipality, etc.)* of ....., MAKE OATH AND SAY *(or AFFIRM)*:

*(Personal service)*

1. On *(date)*, at *(time)*, I served *(identify person served)* with the *(identify documents served)* by leaving a copy with him *(or her)* at *(address where service was made)*. *(Where the rules provide for personal service on a corporation, etc. by leaving a copy of the document with another person, substitute: by leaving a copy with (identify person by name and title) at (address where service was made).)*

2. I was able to identify the person by means of *(state the means by which the person's identity was ascertained.)*

*(Service by leaving a copy with an adult person in the same household as an alternative to personal service)*

1. I served *(identify person served)* with the *(identify documents served)* by leaving a copy on *(date)*, at *(time)*, with a person *(insert name if known)* who appeared to be an adult member of the same household in which *(identify person served)* is residing, at *(address where service was made)*, and by sending a copy by prepaid first class *(or registered or certified)* mail on *(date)* to *(identify person served)* at the same address.

2. I ascertained that the person was an adult member of the household by means of *(state how it was ascertained that the person was an adult member of the household)*.

3. Before serving the documents in this way, I made an unsuccessful attempt to serve *(identify person)* personally at the same address on *(date)*. *(If more than one attempt has been made, add: and again on (date).)*

*(Service by mail as an alternative to personal service)*

1. On *(date)*, I sent to the *(identify person served)* by prepaid first class *(or registered or certified)* mail a copy of the *(identify documents served)*.

Form 16B, p.2

2. On (date), I received the attached acknowledgment of receipt card (or post office receipt) bearing a signature that purports to be the signature of (identify person).

(Service by mail on a solicitor)

1. I served (identify party served) with the (identify documents served) by sending a copy by prepaid first class (or registered or certified) mail on (date) to (name of solicitor), the solicitor for the (identify party), at (full mailing address).

(Service by mail on a party acting in person or a non-party)

1. I served (identify party or person served) with the (identify documents served) by sending a copy by prepaid first class (or registered or certified) mail on (date) to (full mailing address), the last address for service provided by (identify party or person) (or, where no such address has been provided: the last known address of (identify party or person).)

SWORN (etc.)

## FORM 16C

## CERTIFICATE OF SERVICE BY SHERIFF

*(General heading)*

## CERTIFICATE OF SERVICE BY SHERIFF

*(Personal service)*

I, *(full name)*, Sheriff *(or Sheriff's Officer)* of the *(County, District, etc.)* of ....., certify that on *(date)*, at *(time)*, I served *(identify person served)* with *(identify documents served)* by leaving a copy with him *(or her)* at *(address where service was made)*. *(Where the rules provide for personal service on a corporation, etc., by leaving a copy of the document with another person, substitute: by leaving a copy with (identify person by name and title) at (address where service was made).)*

I was able to identify the person by means of *(state the means by which the person's identity was ascertained.)*

*(Service by leaving a copy with an adult person in the same household as an alternative to personal service)*

I, *(full name)*, Sheriff *(or Sheriff's Officer)* of the *(County, District, etc.)* of ....., certify that I served *(identify person served)* with this document by leaving a copy in a sealed envelope addressed to him *(or her)* on *(date)*, at *(time)*, with a person *(insert name if known)* who appeared to be an adult member of the same household in which *(identify person served)* is residing at *(address where service was made)*, and by sending a copy by prepaid first class *(or registered or certified)* mail on *(date)* to *(identify person served)* at the same address.

I ascertained that the person was an adult member of the household by means of *(state how it was ascertained that the person was an adult member of the household).*

Before serving the document in this way, I made an unsuccessful attempt to serve *(identify person)* personally at the same address on *(date)*. *(If more than one attempt has been made, add: and again on (date).)*

Date \_\_\_\_\_

\_\_\_\_\_  
*(Signature of sheriff or sheriff's officer)*

## RULES OF CIVIL PROCEDURE

## FORM 18A

## STATEMENT OF DEFENCE

*(General heading)*

## STATEMENT OF DEFENCE

1. The defendant admits the allegations contained in paragraphs ..... of the statement of claim.

2. The defendant denies the allegations contained in paragraphs ..... of the statement of claim.

3. The defendant has no knowledge in respect of the allegations contained in paragraphs ..... of the statement of claim.

4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of defence.)*

*(Date)*

*(Name, address and telephone  
number of defendant's  
solicitor or defendant)*

TO *(Name and address of  
plaintiff's solicitor  
or plaintiff)*



## FORM 18B

## NOTICE OF INTENT TO DEFEND

*(General heading)*

## NOTICE OF INTENT TO DEFEND

The defendant *(or defendant added by counterclaim  
or third party)* intends to defend this action.

*(Date)**(Name, address and telephone  
number of solicitor or party  
serving notice)*

TO *(Name and address  
of solicitor or  
party on whom notice  
is served)*

## FORM 19A

DEFAULT JUDGMENT  
(DEBT OR LIQUIDATED DEMAND)*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant, filed, and the defendant having been noted in default,

1. IT IS ORDERED AND ADJUDGED that the defendant pay to the plaintiff the sum of \$..... and the sum of \$..... for the costs of this action. (*Where costs are to be assessed, substitute the costs of this action as assessed by the court.*)

This judgment bears interest at the rate of ..... per cent per year from its date.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

## FORM 19B

DEFAULT JUDGMENT  
(RECOVERY OF POSSESSION OF LAND)*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant, filed, and the defendant having been noted in default,

1. IT IS ORDERED AND ADJUDGED that the defendant deliver to the plaintiff possession of the following land:  
*(Where the description of the land is very lengthy, substitute the land described in the attached schedule.)*

2. IT IS ORDERED AND ADJUDGED that the defendant pay to the plaintiff the sum of \$..... for the costs of this action.  
*(Where costs are to be assessed, substitute the costs of this action as assessed by the court.)*

The costs fixed by and payable under this judgment bear interest at the rate of ..... per cent per year from its date.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

## FORM 19C

DEFAULT JUDGMENT  
(RECOVERY OF CHATTELS)*(General heading)**(Court Seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant filed, and the defendant having been noted in default,

1. IT IS ORDERED AND ADJUDGED that the defendant deliver to the plaintiff the following chattels:  
*(Where the number of chattels is very large or their description is very lengthy, substitute the chattels described in the attached schedule.)*

2. IT IS ORDERED AND ADJUDGED that the defendant pay to the plaintiff the sum of \$..... for the costs of this action.  
*(Where costs are to be assessed, substitute the costs of this action as assessed by the court.)*

The costs fixed by and payable under this judgment bear interest at the rate of ..... per cent per year from its date.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_



## FORM 19D

## REQUISITION FOR DEFAULT JUDGMENT

*(General heading)*

## REQUISITION FOR DEFAULT JUDGMENT

TO THE LOCAL REGISTRAR AT *(place)*

*(Where the defendant has not been noted in default, begin with: The plaintiff requires you to note the defendant (name) in default in this action on the ground that (state nature of default).)*

Default judgment may properly be signed in this action because the claim is for

- ☐ a debt or liquidated demand in money
- ☐ recovery of possession of land
- ☐ recovery of chattels
- ☐ foreclosure, sale or redemption of a mortgage

*(Debt or liquidated demand)*

- ☐ There has been no payment on account of the claim since the statement of claim was issued.

OR

- ☐ The following payments have been made on account of the claim since the statement of claim was issued:

Date

Amount

---

 TOTAL: \$

*(Interest)* The plaintiff is entitled to prejudgment interest on the claim, calculated as follows:

Principal Sum	Start Date	End Date	Number of Days	Rate	Interest Amount
------------------	---------------	-------------	-------------------	------	--------------------

---

 TOTAL: \$

*(Where applicable, add: The plaintiff is entitled to postjudgment interest at the rate of (as set out in the statement of claim).)*

*A default judgment may include prejudgment interest, or bear postjudgment interest at a rate other than as provided in section 139 of the Courts of Justice Act, only if it is claimed in the statement of claim.*

The plaintiff wishes costs to be

☐ fixed by the local registrar

☐ assessed by an assessment officer

(Date)

*(Signature of plaintiff's  
solicitor or plaintiff)*

*(Name, address and telephone number  
of solicitor or plaintiff)*

Form 22A  
SPECIAL CASE

*(General heading)*

SPECIAL CASE

THE FOLLOWING CASE is stated for the opinion of the court:

1. *(Set out, in consecutively numbered paragraphs, the material facts of the case, as agreed on by the parties, that are necessary to enable the court to determine the questions stated. Refer to and include a copy of any relevant documents.)*

THE QUESTIONS for the opinion of the court are:

1. *(Set out the questions in consecutively numbered paragraphs.)*

THE RELIEF SOUGHT on the determination of the questions stated is:

1. *(Set out the relief sought, as agreed on by the parties, in respect of each possible answer to each of the questions stated, in a form that could readily be incorporated into an order.)*

*(Date)*

*(Signatures of all solicitors or parties in the proceeding)*

*(Names, addresses and telephone numbers of all solicitors or parties in the proceeding)*

## FORM 23A

## NOTICE OF DISCONTINUANCE

*(General heading)*

## NOTICE OF DISCONTINUANCE

The plaintiff wholly discontinues this action.  
*(Where applicable, add against the defendant (name).)*

*(Or The plaintiff discontinues that part of this  
action relating to ..... Where applicable, add  
against the defendant (name).)*

*(Date)*

*(Name, address and telephone  
number of plaintiff's  
solicitor or plaintiff)*

TO *(Name and address of  
defendant's solicitor  
or defendant)*



## FORM 23B

## NOTICE OF ELECTION TO PROCEED WITH COUNTERCLAIM

*(General heading)*

## NOTICE OF ELECTION

The defendant elects to proceed with the counterclaim  
in this action.

*(Date)**(Name, address and telephone  
number of defendant's solicitor  
or defendant)*

TO *(Name and address of  
plaintiff's solicitor  
or plaintiff)*

## FORM 23C

## NOTICE OF WITHDRAWAL OF DEFENCE

*(General heading)*

## NOTICE OF WITHDRAWAL

The defendant withdraws the statement of defence in this action.

*(Or The defendant withdraws paragraphs ..... of the statement of defence in this action.)*

*(Date)*

*(Name, address and telephone  
number of defendant's  
solicitor or defendant)*

TO *(Name and address of  
plaintiff's solicitor  
or plaintiff)*

## FORM 25A

## REPLY

*(General heading)*

## REPLY

1. The plaintiff admits the allegations contained in paragraphs ..... of the statement of defence.
2. The plaintiff denies the allegations contained in paragraphs ..... of the statement of defence.
3. The plaintiff has no knowledge in respect of the allegations contained in paragraphs ..... of the statement of defence.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of reply to the statement of defence.)*

*(Date)*

*(Name, address and telephone  
number of plaintiff's  
solicitor or plaintiff)*

TO *(Name and address of  
defendant's solicitor  
or defendant)*

## FORM 27A

COUNTERCLAIM  
(AGAINST PARTIES TO MAIN ACTION ONLY)

*(Where the counterclaim includes as a defendant to the counterclaim a person who is not already a party to the main action, use Form 27B.)*

*(Include the counterclaim in the same document as the statement of defence, and entitle the document STATEMENT OF DEFENCE AND COUNTERCLAIM. The counterclaim is to follow the last paragraph of the statement of defence. Number the paragraphs in sequence commencing with the number following the number of the last paragraph of the statement of defence.)*

COUNTERCLAIM

The defendant (name if more than one defendant) claims:  
*(State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the counterclaim.)*

*(Where the defendant to the counterclaim is sued in a capacity other than that in which he or she is a party to the main action, set out the capacity.)*

*(Date)*

*(Name, address and telephone number of plaintiff by counterclaim's solicitor or plaintiff by counterclaim)*

TO *(Name and address of solicitor for defendant to the counterclaim or of defendant to the counterclaim)*



# Form 27B COUNTERCLAIM

## (AGAINST PLAINTIFF AND PERSON NOT ALREADY PARTY TO MAIN ACTION)

*(Where all defendants to the counterclaim are already parties to the main action, use Form 27A.)*

*(General heading)*

*(Add a second title of proceeding, as follows:)*

A N D B E T W E E N :

*(Court seal)*

*(name)*

Plaintiff by  
counterclaim

and

*(name)*

Defendants to  
the counterclaim

### STATEMENT OF DEFENCE AND COUNTERCLAIM

#### THE DEFENDANTS TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR DEFENCE AND WITHOUT FURTHER NOTICE TO YOU.

*Where the counterclaim is for money only, include the following:)*

IF YOU PAY THE AMOUNT OF THE COUNTERCLAIM AGAINST YOU, and \$..... for costs, within the time for serving and filing your defence to counterclaim, you may move to have the counterclaim against you dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the counterclaim and \$100.00 for costs and have the costs assessed by the court.

as \_\_\_\_\_

Issued by \_\_\_\_\_  
Address of \_\_\_\_\_ Local registrar  
court office \_\_\_\_\_

*(Name and address of defendant to the counterclaim who is not already a party to the main action)*

*(Name and address of solicitor for other defendant to the counterclaim or of other defendant to the counterclaim)*

Form 27B, p.2

*(The counterclaim is to follow the last paragraph of the statement of defence. Number the paragraphs in sequence commencing with the number following the number of the last paragraph of the statement of defence.)*

## COUNTERCLAIM

*The defendant (name if more than one defendant) claims: (State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the counterclaim.)*

*(Where a defendant to the counterclaim who is not already a party to the main action is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)*

*(Date of issue)*

*(Name, address and telephone number  
of plaintiff by counterclaim's  
solicitor or plaintiff by counterclaim)*

## FORM 27C

## DEFENCE TO COUNTERCLAIM

*(General heading, including second title of proceeding, if required)*

*(A plaintiff who delivers a reply in the main action must include the defence to counterclaim in the same document as the reply, and the document is to be entitled REPLY AND DEFENCE TO COUNTERCLAIM. The defence to counterclaim is to follow immediately after the last paragraph of the reply and the paragraphs are to be numbered in sequence commencing with the number following the number of the last paragraph of the reply.)*

## DEFENCE TO COUNTERCLAIM

1. The defendant to the counterclaim admits the allegations contained in paragraphs ..... of the counterclaim.

2. The defendant to the counterclaim denies the allegations contained in paragraphs ..... of the counterclaim.

3. The defendant to the counterclaim has no knowledge in respect of the allegations contained in paragraphs ..... of the counterclaim.

4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of defence to the counterclaim.)*

*(Date)*

*(Name, address and telephone  
number of solicitor for  
defendant to the counterclaim  
or defendant to the counterclaim)*

TO *(Name and address of plaintiff  
by counterclaim's solicitor or  
of plaintiff by counterclaim)*

## FORM 27D

## REPLY TO DEFENCE TO COUNTERCLAIM

*(General heading, including second title of proceeding, if required)*

## REPLY TO DEFENCE TO COUNTERCLAIM

1. The plaintiff by counterclaim admits the allegations contained in paragraphs ..... of the defence to counterclaim.
2. The plaintiff by counterclaim denies the allegations contained in paragraphs ..... of the defence to counterclaim.
3. The plaintiff by counterclaim has no knowledge in respect of the allegations contained in paragraphs ..... of the defence to counterclaim.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of reply to the defence to counterclaim.)*

*(Date)*

*(Name, address and telephone  
number of plaintiff by  
counterclaim's solicitor or  
plaintiff by counterclaim)*

TO *(Name and address of solicitor  
for the defendant to the  
counterclaim or defendant to  
the counterclaim)*



## FORM 28A

## CROSSCLAIM

*(Include the crossclaim in the same document as the statement of defence, and entitle the document STATEMENT OF DEFENCE AND CROSSCLAIM. The crossclaim is to follow the last paragraph of the statement of defence. Number the paragraphs in sequence commencing with the number following the number of the last paragraph of the statement of defence.)*

## CROSSCLAIM

*The defendant (name) claims against the defendant (name):  
(State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the crossclaim.)*

*(Where a defendant to the crossclaim is sued in a capacity other than that in which he or she is a party to the main action, set out the capacity. Where the statement of defence and crossclaim is to be served outside Ontario without a court order, include the facts and the specific provisions of Rule 17 relied on in support of such service.)*

*(Date)*

*(Name, address and telephone  
number of crossclaiming  
defendant's solicitor or  
crossclaiming defendant)*

*TO (Name and address of  
defendant to crossclaim's  
solicitor or defendant to  
crossclaim)*

## FORM 28B

## DEFENCE TO CROSSCLAIM

*(General heading)*

## DEFENCE TO CROSSCLAIM

1. The defendant *(name)* admits the allegations contained in paragraphs ..... of the crossclaim.
2. The defendant *(name)* denies the allegations contained in paragraphs ..... of the crossclaim.
3. The defendant *(name)* has no knowledge in respect of the allegations contained in paragraphs ..... of the crossclaim.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of defence to the crossclaim.)*

*(Date)*

*(Name, address and telephone  
number of defendant to cross-  
claim's solicitor or defendant  
to crossclaim)*

TO *(Name and address of  
crossclaiming defendant's  
solicitor or crossclaiming  
defendant)*

## FORM 28C

## REPLY TO DEFENCE TO CROSSCLAIM

*(General heading)*

## REPLY TO DEFENCE TO CROSSCLAIM

1. The defendant *(name)* admits the allegations contained in paragraphs ..... of the defence to crossclaim.
2. The defendant *(name)* denies the allegations contained in paragraphs ..... of the defence to crossclaim.
3. The defendant *(name)* has no knowledge in respect of the allegations contained in paragraphs ..... of the defence to crossclaim.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of reply to the defence to crossclaim.)*

*(Date)*

*(Name, address and telephone  
number of crossclaiming  
defendant's solicitor or  
crossclaiming defendant)*

TO *(Name and address of  
defendant to crossclaim's  
solicitor or defendant to  
crossclaim)*

FORM 29A  
THIRD PARTY CLAIM

SUPREME COURT OF ONTARIO  
(or DISTRICT COURT OF ONTARIO)

(Court file no.)

B E T W E E N:

(name)

Plaintiff

(Court seal)

and

(name)

Defendant

and

(name)

Third Party

THIRD PARTY CLAIM

TO THE THIRD PARTY

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this third party claim. The defendant has defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant's claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a third party defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your third party defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a third party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your third party defence.



Form 29A, p.2

YOU MAY ALSO DEFEND the action by the plaintiff against the defendant by serving and filing a statement of defence within the time for serving and filing your third party defence.

IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Where the third party claim is for money only, include the following:)*

IF YOU PAY THE AMOUNT OF THE THIRD PARTY CLAIM AGAINST YOU, and \$..... for costs, within the time for serving and filing your third party defence, you may move to have the third party claim dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the third party claim and \$100.00 for costs and have the costs assessed by the court.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

TO *(Name and address of  
third party)*

## CLAIM

1. The defendant claims against the third party: *(State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the third party claim.)*

*(Where the third party claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)*

*(Date of issue)*

*(Name, address and telephone number  
of defendant's solicitor or defendant)*

## FORM 29B

## THIRD PARTY DEFENCE

*(General heading, with title of proceeding  
in accordance with Form 29A)*

## THIRD PARTY DEFENCE

1. The third party admits the allegations contained in paragraphs ..... of the third party claim.
2. The third party denies the allegations contained in paragraphs ..... of the third party claim.
3. The third party has no knowledge in respect of the allegations contained in paragraphs ..... of the third party claim.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of defence to the third party claim.)*

*(Date)*

*(Name, address and telephone  
number of third party's solicitor  
or third party)*

TO *(Name and address of  
defendant's solicitor  
or defendant)*

## FORM 29C

## REPLY TO THIRD PARTY DEFENCE

*(General heading, with title of proceeding  
in accordance with Form 29A)*

## REPLY TO THIRD PARTY DEFENCE

1. The defendant admits the allegations contained in paragraphs ..... of the third party defence.
2. The defendant denies the allegations contained in paragraphs ..... of the third party defence.
3. The defendant has no knowledge in respect of the allegations contained in paragraphs ..... of the third party defence.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of reply to the third party defence.)*

*(Date)*

*(Name, address and telephone  
number of defendant's solicitor  
or defendant)*

TO *(Name and address of  
third party's solicitor  
or third party)*



## FORM 30A

AFFIDAVIT OF DOCUMENTS  
(INDIVIDUAL)*(General heading)*

## AFFIDAVIT OF DOCUMENTS

I, *(full name of deponent)*, of the *(City, Town, etc.)* of  
 ....., in the *(County, Regional Municipality, etc.)*  
 of ....., the plaintiff *(or as may be)* in this action,  
 MAKE OATH AND SAY *(or AFFIRM)*:

1. I have conducted a diligent search of my records and have made appropriate enquiries of others to inform myself in order to make this affidavit. This affidavit discloses, to the full extent of my knowledge, information and belief, all documents relating to any matter in issue in this action that are or have been in my possession, control or power.

2. I have listed in Schedule A those documents that are in my possession, control or power and that I do not object to producing for inspection.

3. I have listed in Schedule B those documents that are or were in my possession, control or power and that I object to producing because I claim they are privileged, and I have stated in Schedule B the grounds for each such claim.

4. I have listed in Schedule C those documents that were formerly in my possession, control or power but are no longer in my possession, control or power, and I have stated in Schedule C when and how I lost possession or control of or power over them and their present location.

5. I have never had in my possession, control or power any document relating to any matter in issue in this action other than those listed in Schedules A, B and C.

SWORN *(etc.)*

---

*(Signature of deponent)*

## CERTIFICATE OF SOLICITOR

I CERTIFY that I have explained to the deponent the necessity of making full disclosure of all relevant documents.

Date \_\_\_\_\_

---

*(Signature of solicitor)*

## SCHEDULE A

Documents in my possession, control or power that I do not object to producing for inspection.

*(Number each document consecutively. Set out the nature and date of the document and other particulars sufficient to identify it.)*

## SCHEDULE B

Documents that are or were in my possession, control or power that I object to producing on the grounds of privilege.

*(Number each document consecutively. Set out the nature and date of the document and other particulars sufficient to identify it. State the grounds for claiming privilege for each document.)*

## SCHEDULE C

Documents that were formerly in my possession, control or power but are no longer in my possession, control or power.

*(Number each document consecutively. Set out the nature and date of the document and other particulars sufficient to identify it. State when and how possession or control of or power over each document was lost, and give the present location of each document.)*

## FORM 30B

AFFIDAVIT OF DOCUMENTS  
(CORPORATION OR PARTNERSHIP)*(General heading)*

## AFFIDAVIT OF DOCUMENTS

I, (full name of deponent), of the (City, Town, etc.) of  
 ....., in the (County, Regional Municipality, etc.)  
 of ....., MAKE OATH AND SAY (or AFFIRM):

1. I am the (state the position held by the deponent in the corporation or partnership) of the plaintiff (or as may be), which is a corporation (or partnership).
2. I have conducted a diligent search of the corporation's (or partnership's) records and made appropriate enquiries of others to inform myself in order to make this affidavit. This affidavit discloses, to the full extent of my knowledge, information and belief, all documents relating to any matter in issue in this action that are or have been in the possession, control or power of the corporation (or partnership).
3. I have listed in Schedule A those documents that are in the possession, control or power of the corporation (or partnership) and that it does not object to producing for inspection.
4. I have listed in Schedule B those documents that are or were in the possession, control or power of the corporation (or partnership) and that it objects to producing because it claims they are privileged, and I have stated in Schedule B the grounds for each such claim.
5. I have listed in Schedule C those documents that were formerly in the possession, control or power of the corporation (or partnership) but are no longer in its possession, control or power and I have stated in Schedule C when and how it lost possession or control of or power over them and their present location.
6. The corporation (or partnership) has never had in its possession, control or power any documents relating to any matter in issue in this action other than those listed in Schedules A, B and C.

SWORN (etc.)

---

*(Signature of deponent)*

## CERTIFICATE OF SOLICITOR

I CERTIFY that I have explained to the deponent the necessity of making full disclosure of all relevant documents.

Date \_\_\_\_\_

---

*(Signature of solicitor)*

## SCHEDULE A

Documents in the corporation's (or partnership's) possession, control or power that it does not object to producing for inspection.

*(Number each document consecutively. Set out the nature and date of the document and other particulars sufficient to identify it.)*

## SCHEDULE B

Documents that are or were in the corporation's (or partnership's) possession, control or power that it objects to producing on the grounds of privilege.

*(Number each document consecutively. Set out the nature and date of the document and other particulars sufficient to identify it. State the grounds for claiming privilege for each document.)*

## SCHEDULE C

Documents that were formerly in the corporation's (or partnership's) possession, control or power but are no longer in its possession, control or power.

*(Number each document consecutively. Set out the nature and date of the document and other particulars sufficient to identify it. State when and how possession or control of or power over each document was lost, and give the present location of each document.)*



## FORM 30C

## REQUEST TO INSPECT DOCUMENTS

*(General heading)*

## REQUEST TO INSPECT DOCUMENTS

You are requested to produce for inspection all the documents listed in schedule A of your affidavit of documents (or the following documents referred to in your (identify pleading or affidavit):)

*(Date)**(Name, address and telephone number  
of requesting solicitor or party)*

TO *(Name and address of  
solicitor or party  
requested to produce)*

## FORM 34A

## NOTICE OF EXAMINATION

*(To be used only for a party to the proceeding, a person to be examined for discovery or in aid of execution on behalf or in place of a party or a person to be cross-examined on an affidavit. For the examination of any other person, use a summons to witness (Form 34B).)*

*(General heading)*

## NOTICE OF EXAMINATION

TO *(Name of person to be  
examined)*

YOU ARE REQUIRED TO ATTEND FOR AN EXAMINATION (on your affidavit dated *(date)*, for discovery, for discovery on behalf (or in place) of *(identify party)*, in aid of execution against you, etc.) on *(day)*, *(date)*, at *(time)*, at the office of *(name, address and telephone number of examiner)*.

*(Examination for discovery of a party or a person examined on behalf or in place of a party)*

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 30.04(4) of the Rules of Civil Procedure, and the following documents and things: *(Set out the nature and date of each document and give particulars sufficient to identify each document and thing.)*

*(Other examinations)*

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things: *(Set out the nature and date of each document and give particulars sufficient to identify each document and thing.)*

*(Date)*

*(Name, address and telephone number  
of examining solicitor or party)*

TO *(Name and address of  
solicitor or of person  
to be examined)*

## FORM 34B

SUMMONS TO WITNESS  
(EXAMINATION OUT OF COURT)*(General heading)**(Court seal)*

## SUMMONS TO WITNESS

TO *(Name and address of  
person to be examined)*

YOU ARE REQUIRED TO ATTEND FOR AN EXAMINATION (for discovery, in aid of execution against *(identify party)*, etc.) on *(day)*, *(date)*, at *(time)*, at the office of *(name, address and telephone number of examiner)*.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things: *(Set out the nature and date of each document and give particulars sufficient to identify each document and thing.)*

ATTENDANCE MONEY for ..... day(s) of attendance is served with this summons, calculated in accordance with Tariff A of the Rules of Civil Procedure, as follows:

Attendance allowance of \$..... daily	\$.....
Travel allowance	\$.....
Overnight accommodation and meal allowance	\$.....
TOTAL	\$.....

If further attendance is required, you will be entitled to additional attendance money.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

This summons was issued at the request of, and inquiries may be directed to:

*(Name, address and telephone number  
of examining solicitor or party)*

## FORM 34C

## COMMISSION

*(General heading)**(Court seal)*

## COMMISSION

TO *(Name and address  
of commissioner)*

YOU HAVE BEEN APPOINTED A COMMISSIONER for the purpose of taking evidence in this proceeding now pending in this court by order of the court made on *(date)*, a copy of which is attached.

YOU ARE GIVEN FULL AUTHORITY to do all things necessary for taking the evidence mentioned in the order authorizing this commission. *(Where the commission is issued under Rule 36, add: You are also authorized, on consent of the parties, to take the evidence of any other witnesses who may be found in (name of province, state or country).)*

You are to send to this court a transcript of the evidence taken, together with this commission, forthwith after the transcript is completed.

In carrying out this commission, you are to follow the terms of the attached order and the instructions contained in this commission.

THIS COMMISSION is signed and sealed by order of the court.

Date \_\_\_\_\_

Issued by \_\_\_\_\_

Local registrar

Address of  
court office \_\_\_\_\_

*The registrar is to attach to this commission a copy of Rules 34 and 36 and section 45 of the Evidence Act.*



Form 34C, p.2

## INSTRUCTIONS TO COMMISSIONER

1. This commission is to be conducted in accordance with Rules 34 and 36 of the Ontario Rules of Civil Procedure, a copy of which is attached, to the extent that it is possible to do so. The law of Ontario applies to the taking of the evidence.

2. Before acting on this commission, you must take the oath (*or* affirmation) set out below. You may do so before any person authorized by section 45 of the *Evidence Act* of Ontario, a copy of which is attached, to take affidavits or administer oaths or affirmations outside Ontario.

I, ....., swear (*or* affirm) that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality to any of the parties to this proceeding, take the evidence of every witness examined under this commission, and cause the evidence to be transcribed and forwarded to the court. (*In an oath, conclude: So help me God.*)

Sworn (*or* Affirmed) before me  
at the (City, Town, *etc.*) of  
....., in the (Province,  
State, *etc.*) of .....,  
on (date).

(Signature of commissioner)

(Signature and office of person  
before whom oath or affirmation  
is taken)

3. The examining party is required to give the person to be examined at least ..... days notice of the examination and, where the order so provides, to pay attendance money to the person to be examined.

4. You must arrange to have the evidence before you recorded and transcribed. You are to administer the following oath (*or* affirmation) to the person who records and transcribes the evidence:

You swear (*or* affirm) that you will truly and faithfully record and transcribe all questions put to all witnesses and their answers in accordance with the directions of the commissioner. (*In an oath, conclude: So help you God.*)

On consent of the parties, or where the order for this commission provides for it, the examination may be recorded by videotape or other similar means.

Form 34C, p.3

5. You are to administer the following oath (*or* affirmation) to each witness whose evidence is to be taken:

You swear (*or* affirm) that the evidence to be given by you touching the matters in question between the parties to this proceeding shall be the truth, the whole truth, and nothing but the truth. (*In an oath, conclude: So help you God.*)

6. Where a witness does not understand the language or is deaf or mute, the evidence of the witness must be given through an interpreter. You are to administer the following oath (*or* affirmation) to the interpreter:

You swear (*or* affirm) that you understand the ..... language and the language in which the examination is to be conducted and that you will truly interpret the oath (*or* affirmation) to the witness, all questions put to the witness and the answers of the witness, to the best of your skill and understanding. (*In an oath, conclude: So help you God.*)

7. You are to attach to this commission the transcript of the evidence and the exhibits, and any videotape or other recording of the examination. You are to complete the certificate set out below, and mail this commission, the transcript, the exhibits and any videotape or other recording of the examination to the office of the court where the commission was issued. You are to keep a copy of the transcript and, where practicable, a copy of the exhibits until the court disposes of this proceeding. Forthwith after you mail this commission and the accompanying material to the court office, you are to notify the parties who appeared at the examination that you have done so.

#### CERTIFICATE OF COMMISSIONER

I, ....., certify that:

1. I administered the proper oath (*or* affirmation) to the person who recorded and transcribed the evidence, to the witness the transcript of whose evidence is attached and to any interpreter through whom the evidence was given.
2. The evidence of the witness was properly taken.
3. The evidence of the witness was accurately transcribed.

Date \_\_\_\_\_

\_\_\_\_\_  
(Signature of commissioner)

Address of  
court office

## FORM 34E

## ORDER FOR COMMISSION AND LETTER OF REQUEST

(Court file no.)

(Court)

(Name of judge or officer)

(Day and date order made)

(Court seal)

(Title of proceeding)

## ORDER

(Recitals in accordance with Form 59A)

1. THIS COURT ORDERS *(give particulars of any directions given by the court under rule 34.07).*

2. THIS COURT ORDERS that the registrar prepare and issue a commission naming *(name)*, of *(address)*, as commissioner to take the evidence of the witness *(name of witness)* in *(name of province, state or country)* *(where the order is made under Rule 36, add and, on consent of the parties, any other witness who may be found there)* for use at trial *(or on examination for discovery, etc.)*.

3. THIS COURT ORDERS that the registrar prepare and issue a letter of request addressed to the judicial authorities of *(name of province, state or country)*, requesting the issuing of such process as is necessary to compel the witness *(or witnesses)* to attend and be examined before the commissioner.

*(Signature of judge, officer or registrar)*



## FORM 35A

## QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY

*(General heading)*

## QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY

The *(identify examining party)* has chosen to examine the *(identify person to be examined)* for discovery *(where the person is not a party, state whether the person is examined on behalf or in place of or in addition to a party or under a court order)* by written questions and requires that the following questions be answered by affidavit in Form 35B prescribed by the Rules of Civil Procedure, served within fifteen days after service of these questions.

*(Where a further list of questions is served under rule 35.04 substitute:)*

The *(identify examining party)* requires that the *(identify person to be examined)* answer the following further questions by affidavit in Form 35B prescribed by the Rules of Civil Procedure, served within fifteen days after service of these questions.

1. *(Number each question. Where the questions are a further list under rule 35.04, number the questions in sequence following the last question of the previous list.)*

*(Date)*

*(Name, address and telephone number  
of examining party's solicitor or  
examining party)*

TO *(Name and address of solicitor  
for person to be examined or  
of person to be examined)*

## FORM 35B

## ANSWERS ON WRITTEN EXAMINATION FOR DISCOVERY

*(General heading)*

## ANSWERS ON WRITTEN EXAMINATION FOR DISCOVERY

I, *(full name of deponent)*, of the *(City, Town, etc.)* of ..... , in the *(County, Regional Municipality, etc.)* of ..... , the *(identify the capacity in which the deponent makes the affidavit)*, MAKE OATH AND SAY *(or AFFIRM)* that the following answers to the questions dated *(date)* submitted by the *(identify examining party)* are true, to the best of my knowledge, information and belief:

1. *(Number each answer to correspond with the question. Where the deponent objects to answering a question, state: I object to answering this question on the ground that it is irrelevant to the matters in issue or that the information sought is privileged because (specify) or as may be.)*

SWORN *(etc.)*

## FORM 37A

## NOTICE OF MOTION

*(General heading)*

## NOTICE OF MOTION

THE *(identify moving party)* will make a motion to a judge *(or a master, a local judge or as may be)* on *(day)*, *(date)*, at *(time)*, or as soon after that time as the motion can be heard, at *(address of court house)*.

THE MOTION IS FOR *(state here the precise relief sought)*.

THE GROUNDS FOR THE MOTION ARE *(specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on)*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion: *(list the affidavits or other documentary evidence to be relied on)*.

*(Date)*

*(Name, address and telephone  
number of moving party's  
solicitor or moving party)*

TO *(Name and address of  
responding party's  
solicitor or responding  
party)*

## RULES OF CIVIL PROCEDURE

FORM 38A

## ORDER OF TRANSFER

*(General heading)**(Court seal)*

## ORDER OF TRANSFER

ON REQUISITION of the respondent, IT IS ORDERED that this application be transferred for hearing before a High Court judge.

Date \_\_\_\_\_

Signed by \_\_\_\_\_

Local registrar

Address of  
court office \_\_\_\_\_

\_\_\_\_\_



## FORM 38B

## NOTICE OF TRANSFER

*(General heading)*

## NOTICE OF TRANSFER

THIS APPLICATION HAS BEEN TRANSFERRED for hearing before a High Court judge on *(day)*, *(date)*, at *(time)*, or as soon after that time as the application can be heard, at *(address of court house)*.

*(Date)*

*(Name, address and telephone  
number of applicant's solicitor  
or applicant)*

TO *(Name and address of  
respondent's solicitor  
or respondent)*

## FORM 38C

## NOTICE OF APPEARANCE

*(General heading)*

## NOTICE OF APPEARANCE

The respondent intends to respond to this application.

*(Date)**(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address of  
applicant's solicitor  
or applicant)*

## FORM 42A

## CERTIFICATE OF PENDING LITIGATION

*(General heading)*

*(Court seal)*

## CERTIFICATE OF PENDING LITIGATION

I CERTIFY that in this proceeding an interest in the following land is in question:  
*(Set out a description of the land sufficient for registration. Where the land is registered under the Land Titles Act, include the parcel number. Attach a schedule if necessary.)*

This certificate is issued under an order of the court made on *(date)*.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_

\_\_\_\_\_

## FORM 43A

## INTERPLEADER ORDER - GENERAL

(Court file no.)

(Court)

(Name of judge or officer)

(Day and date order made)

(Court seal)

(Title of proceeding)

## INTERPLEADER ORDER

(Where an interpleader application results in a judgment, amend the form accordingly.)

(Recitals in accordance with Form 59A or 59B)

*Payment of money into court*

1. THIS COURT ORDERS that the (identify party) pay into court the sum of \$....., less costs fixed at \$....., to await the outcome of a proceeding in this court between (identify parties) (or to await the outcome of this proceeding).
2. THIS COURT DECLARES that on compliance with paragraph 1 of this order, the liability of (identify party) in respect of the above sum is extinguished.
3. THIS COURT ORDERS (include any other order made by the court under rule 43.04).

*Sale of property and payment of proceeds into court*

1. THIS COURT ORDERS that (identify property) be sold by (method of sale) and that the proceeds, less expenses of sale and the costs of (identify party) fixed at \$....., be paid into court to await the outcome of a proceeding in this court between (identify parties) (or to await the outcome of this proceeding).
2. THIS COURT DECLARES that on compliance with paragraph 1 of this order, the liability of (identify party) in respect of the above sum is extinguished.
3. THIS COURT ORDERS (include any other order made by the court under rule 43.04).



Form 43A, p.2.

*Deposit of property with an officer of the court*

1. THIS COURT ORDERS that (*identify property*) be deposited with the Sheriff of the (*county or district*) (*or as may be*) to await the outcome of a proceeding in this court between (*identify parties*) (*or to await the outcome of this proceeding*).

2. THIS COURT DECLARES that on compliance with paragraph 1 of this order, the liability of (*identify party*) in respect of the above property is extinguished.

3. THIS COURT ORDERS (*include any other order made by the court under rule 43.04*).

*Trial of an issue*

(*This paragraph will normally form part of an order for payment into court or deposit of property with an officer of the court.*)

4. THIS COURT ORDERS that there be a trial of the issue of (*give particulars of issue to be tried*), in which (*identify party*) shall be plaintiff and (*identify party*) shall be defendant.

5. THIS COURT ORDERS (*include any directions given by the court respecting pleadings, discovery and other matters*).

(*Signature of judge, officer or local registrar*)

## FORM 43B

## INTERPLEADER ORDER - MOTION BY SHERIFF

(Court file no.)

(Court)

(Name of judge or officer)

(Day and date order made)

(Court seal)

(Title of Proceeding)

## INTERPLEADER ORDER

(Where an interpleader application results in a judgment, amend the form accordingly.)

(Recitals in accordance with Form 59A or 59B)

1. THIS COURT ORDERS that the sheriff sell (identify property) by (method of sale) and that the proceeds, less expenses of sale and the sheriff's fees, be paid into court (or that the sheriff hold (identify property)) to await the outcome of a proceeding in this court between (identify parties).
2. THIS COURT DECLARES that on compliance with paragraph 1 of this order, the liability of the Sheriff of the (county or district) in respect of the above property is extinguished.
3. THIS COURT ORDERS (include any other order made by the court under rule 43.04 or 43.05).

(Signature of judge, officer or local registrar)

FORM 44A

BOND - INTERIM RECOVERY OF PERSONAL PROPERTY

*(General heading)*

BOND

WE, *(identify party)* and *(name of surety)*, jointly and severally bind ourselves and our successors to the Sheriff of the *(county or district)* in the sum of \$..... if *(identify party)* fails to return *(identify property)* to *(identify opposite party)* without delay when ordered to do so, and to pay any damages and costs that *(identify opposite party)* has sustained by reason of the interim order for recovery of possession of the property.

Date \_\_\_\_\_

Witness \_\_\_\_\_

\_\_\_\_\_  
*Signature of party* (seal)

Witness \_\_\_\_\_

\_\_\_\_\_  
*Signature of surety* (seal)

## FORM 47A

## JURY NOTICE

*(General heading)*

## JURY NOTICE

THE *(identify party)* REQUIRES that this action be tried  
(or that the issues of fact or that the damages in this action  
be assessed) by a jury.

*(Date)**(Name, address and telephone  
number of solicitor or party  
delivering notice)*

TO *(Name and address of solicitor  
or party receiving notice)*



## FORM 48A

## NOTICE OF READINESS FOR TRIAL

*(General heading)*

## NOTICE OF READINESS FOR TRIAL

The *(identify party)* is ready for trial and will forthwith set this action down for trial at *(place)*.

Any party may have this action placed on the trial list (a) sixty days after the action is set down, or (b) immediately on the filing of the consent in writing of every party other than the party delivering this notice.

The party who has set the action down for trial and any party who consents to this action being placed on a trial list must not initiate or continue any motion or form of discovery without leave of the court except as provided in subrule 48.04(2) of the Rules of Civil Procedure. When this action is placed on a trial list, a pre-trial conference in the action will proceed as scheduled and the trial will proceed when the action is reached on the trial list, unless the court orders otherwise.

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
giving notice)*

TO *(Name and address of solicitor  
or party receiving notice)*

## FORM 48B

## NOTICE OF LISTING FOR TRIAL

*(General heading)*

## NOTICE OF LISTING FOR TRIAL

THIS ACTION WILL FORTHWITH BE PLACED ON THE NON-JURY  
(or JURY) TRIAL LIST at *(place)*. You may inquire at the  
office of the local registrar at *(address)*, telephone  
....., to ascertain the approximate date of trial.

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
giving notice)*

TO *(Name and address of solicitor  
or party receiving notice)*

## FORM 48C

## NOTICE OF STATUS HEARING

*(General heading)*

## NOTICE OF STATUS HEARING

## TO THE PARTIES AND THEIR SOLICITORS

MORE THAN ONE YEAR HAS PASSED since a statement of defence in this action was filed. According to the records in the court office, this action has not yet been placed on the trial list or terminated.

YOU ARE REQUIRED TO ATTEND a status hearing to be held before a judge *(or local judge)* of this court on *(day)*, *(date)*, at *(time)*, at *(address of court house)*, to inquire into the status of this action, UNLESS before that date the action has been placed on a trial list or terminated. Where a party does not attend in person, the party's solicitor must file proof that a copy of this notice was given to the party.

AT THE STATUS HEARING, the plaintiff must show cause why the action should not be dismissed for delay, and the presiding judge may set time periods for the completion of the remaining steps necessary to place the action on a trial list and may order that the action be placed on a trial list within a specified time or may dismiss the action for delay.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

TO *(Names and addresses of all solicitors  
and all parties acting in person)*

*(Rule 48.13 requires at least ninety days notice of a status hearing.)*

## FORM 49A

## OFFER TO SETTLE

*(General heading)*

## OFFER TO SETTLE

The *(identify party)* offers to settle this proceeding  
(or the following claims in this proceeding) on the following  
terms: *(Set out terms in consecutively numbered paragraphs.)*

*(Date)**(Name, address and telephone  
number of solicitor or party  
making offer)*

TO *(Name and address of  
solicitor or party  
to whom offer is  
made)*



## FORM 49B

## NOTICE OF WITHDRAWAL OF OFFER

*(General heading)*

## NOTICE OF WITHDRAWAL OF OFFER

The *(identify party)* withdraws the offer to settle  
dated *(date)*.

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
giving notice)*

TO *(Name and address of  
solicitor or party  
to whom notice is  
given)*

## FORM 49C

## ACCEPTANCE OF OFFER

*(General heading)*

## ACCEPTANCE OF OFFER

The *(identify party)* accepts your offer to settle  
dated *(date)*.

*(Date)**(Name, address and telephone  
number of solicitor or party  
accepting offer)*

TO *(Name and address of  
solicitor or party  
whose offer is  
accepted)*

## FORM 49D

## OFFER TO CONTRIBUTE

*(General heading)*

## OFFER TO CONTRIBUTE

The defendant *(name of defendant making offer)* offers to contribute to a settlement of the plaintiff's claim on the following terms: *(Set out terms in consecutively numbered paragraphs.)*

*(Date)*

*(Name, address and telephone  
number of solicitor or  
defendant making offer)*

TO *(Name and address of  
solicitor or defendant  
to whom offer is made)*

## FORM 51A

## REQUEST TO ADMIT

*(General heading)*

## REQUEST TO ADMIT

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts: *(Set out facts in consecutively numbered paragraphs.)*

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the authenticity (see rule 51.01 of the Rules of Civil Procedure) of the following documents: *(Number each document and give particulars sufficient to identify each. Specify whether the document is an original or a copy and, where the document is a copy of a letter, telegram or telecommunication, state the nature of the document.)*

Attached to this request is a copy of each of the documents referred to above. *(Where it is not practicable to attach a copy or where the party already has a copy, state which documents are not attached and give the reason for not attaching them.)*

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 51B prescribed by the Rules of Civil Procedure WITHIN TWENTY DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
serving request)*

TO *(Name and address of  
solicitor or party on  
whom request is served)*



## FORM 51B

## RESPONSE TO REQUEST TO ADMIT

*(General heading)*

## RESPONSE TO REQUEST TO ADMIT

In response to your request to admit dated *(date)*, the  
*(identify party responding to the request)*:

1. Admits the truth of facts numbers .....
2. Admits the authenticity of documents numbers  
.....
3. Denies the truth of facts numbers .....
4. Denies the authenticity of documents numbers  
.....
5. Refuses to admit the truth of facts numbers  
..... for the following reasons: *(Set  
out reason for refusing to admit each fact.)*
6. Refuses to admit the authenticity of documents  
numbers ..... for the following reasons:  
*(Set out reason for refusing to admit each  
document.)*

*(Date)**(Name, address and telephone  
number of solicitor or party  
serving response)*

TO *(Name and address of  
solicitor or party on  
whom response is served)*

(SUMMONS TO WITNESS (AT HEARING))

(Name, address and telephone number of solicitor or party serving summons)

## FORM 53B

## WARRANT FOR ARREST (DEFAULTING WITNESS)

(Court file no.)

(Court)

(Name of judge)

(Day and date)

(Court seal)

(Title of proceeding)

## WARRANT FOR ARREST

TO ALL SHERIFFS and other peace officers in Ontario  
AND TO the officers of all correctional institutions in Ontario

WHEREAS the witness (*name*), of (*address*), was served with a summons to witness to give evidence at the hearing of this proceeding, and the proper attendance money was paid or tendered,

AND WHEREAS the witness failed to obey the summons, and I am satisfied that the evidence of the witness is material to this proceeding,

YOU ARE ORDERED TO ARREST and bring the witness (*name of witness*) before the court to give evidence in this proceeding, and if the court is not then sitting or if the witness cannot be brought forthwith before the court, to deliver the witness to a provincial correctional institution or other secure facility, to be admitted and detained there until the witness can be brought before the court.

(Signature of judge)

## RULES OF CIVIL PROCEDURE

FORM 53C

## SUMMONS TO A WITNESS OUTSIDE ONTARIO

(General heading)

(Court seal)

## SUMMONS TO A WITNESS OUTSIDE ONTARIO

TO (Name and address of witness)

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE (in court at the hearing of this proceeding, on an examination for discovery, on a cross-examination on your affidavit dated (date), etc.) on (day), (date), at (address of court house), and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: *(Set out the nature and date of each document and give particulars sufficient to identify each document and thing.)*

ATTENDANCE MONEY for ..... day(s) of attendance is served with this summons, calculated in accordance with the *Interprovincial Subpoenas Act* (Ontario), as follows:

Attendance allowance of \$20.00 daily for each day of absence from your ordinary residence (not less than \$60.00)	\$.....
Travel allowance	\$.....
Hotel accommodation allowance for not less than three days (not less than \$60.00)	\$.....
Meal allowance for not less than three days (not less than \$48.00)	<u>\$.....</u>
TOTAL	<u>\$.....</u>

If further attendance is required, you will be entitled to additional attendance money.

OBEDIENCE TO THIS SUMMONS may be compelled by the courts of your province under the *Interprovincial Subpoenas Act*.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local registrar  
Address of  
court office \_\_\_\_\_

This summons was issued at the request of, and inquiries may be directed to:

(Name, address and telephone number of  
solicitor or party serving summons)

Attach or endorse the judge's certificate under section 5 of the Interprovincial Subpoenas Act.



## FORM 53D

## ORDER FOR ATTENDANCE OF WITNESS IN CUSTODY

(Court) (Court file no.)

(Name of judge or master) (Day and date order made)  
 (Court seal) (Title of proceeding)

## ORDER FOR ATTENDANCE OF WITNESS IN CUSTODY

TO THE OFFICERS OF (name of correctional institution)  
 AND TO all peace officers in Ontario

WHEREAS it appears that the evidence of the witness (name),  
 who is detained in custody, is material to this proceeding,

1. THIS COURT ORDERS that the witness (name) be brought  
 before this court (or as may be) on (day), (date), at (time), at  
 (address), to give evidence on behalf of the (identify party),  
 and that the witness be returned and readmitted immediately there-  
 after to the correctional institution or other facility from which  
 the witness was brought.

(Signature of judge, officer or registrar)

## FORM 55A

## NOTICE OF HEARING FOR DIRECTIONS

*(General heading)*

## NOTICE OF HEARING FOR DIRECTIONS

By order of the court, a copy of which is served with this notice, a reference was directed to *(person conducting reference)* for the purpose of *(set out purpose or reference)*.

The *(identify party)* has obtained an appointment with *(name of person conducting reference)* on *(day)*, *(date)*, at *(time)*, at *(address)* for a hearing to consider directions for the conduct of the reference in this proceeding.

IF YOU FAIL TO ATTEND, in person or by an Ontario lawyer acting for you, directions may be given and the reference may proceed in your absence and without further notice to you, and you will be bound by any order made in the proceeding.

*(Date)*

*(Name, address and telephone number  
of solicitor or party serving notice)*

TO *(Name and address of  
solicitor or party  
receiving notice)*

## FORM 55B

## NOTICE TO PARTY ADDED ON REFERENCE

*(General heading)*

## NOTICE TO PARTY ADDED ON REFERENCE

TO *(Name of party added on reference)*

By order of the court, a copy of which is served with this notice, a reference was directed to *(person conducting reference)* for the purpose of *(set out purpose of reference)*.

YOU HAVE BEEN MADE A PARTY TO THIS PROCEEDING by order of *(name of person conducting reference)*, a copy of which is also served with this notice.

THE REFERENCE WILL PROCEED on *(day)*, *(date)*, at *(time)*, at *(address)*.

YOU MAY MAKE A MOTION to a judge of this court WITHIN TEN DAYS *(or where the person is to be served outside Ontario, such further time as the referee directs)* after this notice is served on you to set aside or vary the order directing the reference or the order adding you as a party.

IF YOU FAIL TO DO SO OR IF YOU FAIL TO ATTEND ON THE REFERENCE, in person or by an Ontario lawyer acting for you, the reference may proceed in your absence and without further notice to you, and you will be bound by any order made in this proceeding.

*(Date)* *(Name, address and telephone number  
of solicitor or party serving notice)*

TO *(Name and address of  
party added on reference)*

## FORM 55C

## REPORT ON REFERENCE (ADMINISTRATION OF ESTATE)

*(General heading)*

## REPORT ON REFERENCE

In accordance with the order directing a reference dated (date), I have disposed of the matters referred to me, and I report as follows:

1. The following parties were served with the order directing a reference and a notice of hearing for directions: *(Set out names.)* *(Where applicable, add: Service on the following parties was dispensed with: (Set out names and the reason for dispensing with service).)* The following parties were added on the reference and were served with a notice to party added on reference: *(Set out names.)*

2. The following parties did not attend on the reference: *(Set out names.)*

3. The personal estate not specifically bequeathed by the testator received by the executors and for which they are chargeable amounts to \$....., and they have paid or are entitled to be allowed the sum of \$....., leaving a balance due from *(or to)* them of \$..... *(or, where applicable: No personal estate has been received by the executors, nor are they chargeable with any.)*

4. The creditors' claims received in response to the advertisement for creditors and which I have allowed are set out in Schedule A and amount altogether to \$..... *(or, where applicable: No creditor has sent in a claim in response to the advertisement for creditors, nor has any such claim been proved before me.)*

5. The funeral expenses of the testator amounting to \$..... have been paid by the executors and are allowed to them in the account of personal estate.

6. The legacies given by the testator are set out in Schedule B, and with the interest therein mentioned, remain due to the persons named *(or as the case may be)*.

7. The personal estate of the testator outstanding or undisposed of is set out in Schedule C.

8. The real estate owned by the testator and the encumbrances affecting it are set out in Schedule D.

9. The rents and profits of the testator's real estate received by the executors and for which they are chargeable amount to \$..... and they have paid or are entitled to be allowed the sum of \$....., leaving a balance due from *(or to)* them of \$..... *(or,*



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*where applicable:* No rents and profits have been received by the executors, nor are they chargeable with any).

10. I have allowed the executors the sum of \$..... as compensation for their services in the management of the estate.

11. I have caused the real estate, other than (*identify property*), which was specifically devised, to be sold and the purchasers have paid their purchase money into court.

12. In Schedule E, I have shown how the money in court is to be dealt with.

(Date)

(Signature of referee)

(*All schedules should be as brief as possible. Only the general character of the things described should be shown. Land should be described without setting out a full legal description.*)

(*In Schedule C, the personal estate not specifically bequeathed should be set out separately from the other personal property outstanding or undisposed of. Where there is no specific bequest, the report should state that fact.*)

## FORM 55D

## NOTICE OF CONTESTED CLAIM

*(General heading)*

## NOTICE OF CONTESTED CLAIM

YOUR CLAIM IN THIS PROCEEDING IS BEING CONTESTED. You are required to prove your claim before the referee on *(day)*, *(date)*, *(time)*, at *(address)*.

IF YOU FAIL TO ATTEND AND PROVE YOUR CLAIM, YOUR CLAIM MAY BE DISALLOWED.

*(Date)**(Name, address and telephone number  
of party or solicitor serving  
notice)*

TO *(Name and address of  
creditor)*

## FORM 55E

## NOTICE TO CREDITOR

*(General heading)*

## NOTICE TO CREDITOR

YOU MAY OBTAIN PAYMENT of the amount allowed by the court in respect of your claim in this proceeding from the office of the Accountant of the Supreme Court, 2nd floor, 123 Edward Street, Toronto, Ontario M5G 1E2 (or the local registrar of this court at *(address)*).

*(Date)**(Name, address and telephone  
number of solicitor or party  
serving notice)*

TO *(Name and address  
of creditor)*

## FORM 55F

## CONDITIONS OF SALE

## CONDITIONS OF SALE

1. No person shall advance the bidding in an amount less than \$10 at any bidding under \$500 nor in an amount less than \$20 at any bidding over \$500. No person shall be allowed to retract a bid.

2. The property shall be sold to the highest bidder. Where any dispute arises as to who is the last or highest bidder, the property shall be put up again.

3. All parties to the proceeding may bid, except the party having carriage of the sale and any trustee or agent for the party or other person in a fiduciary relationship to the party.

4. The purchaser shall, at the time of sale, pay to the party having carriage of the sale or to the party's solicitor a deposit of ten per cent of the purchase price and shall pay the balance of the purchase price on completion of the sale. On payment of the balance, the purchaser shall be entitled to receive a transfer and to take possession. The purchaser shall, at the time of sale, sign an agreement for the completion of the sale.

5. The purchaser shall have the transfer prepared at his or her own expense and tender it to the party having carriage of the sale for execution.

6. Where the purchaser fails to comply with any of these conditions, the deposit and all other payments made shall be forfeited and the property may be resold. Any deficiency on the resale, together with all expenses incurred on the resale or caused by the default, shall be paid by the defaulting purchaser.



## FORM 55G

## INTERIM REPORT ON SALE

*(General heading)*

## INTERIM REPORT ON SALE

1. In accordance with the order in this proceeding dated *(date)*, in the presence of *(or after notice to)* all parties concerned, I settled the form of an advertisement and the conditions of sale for the sale of the property referred to in the judgment.

2. The advertisement was published as directed, and the property was offered for sale by public auction by me *(or by (name), an auctioneer appointed by me for that purpose)* on *(date)*.

3. The sale was conducted in a fair, open and proper manner and *(name)* was declared the highest bidder for and became the purchaser of the property at the price of \$....., payable as follows: *(Set out briefly the conditions of sale for payment of the purchase money.)*

*(Date)**(Signature of referee)*

## FORM 56A

## ORDER FOR SECURITY FOR COSTS

(Court file no)

(Court)

(Name of judge or master)

(Day and date order made)

(Court seal)

(Title of proceeding)

## ORDER FOR SECURITY FOR COSTS

(Recitals in accordance with Form 59A)

1. THIS COURT ORDERS that within ..... days after this order is served on the plaintiff, the plaintiff shall pay into court (or to (name)) the sum of \$..... as security for the costs of this action.

(Where a plaintiff is ordered to give security for costs in some other form, give a description of the security required and vary the form of the order accordingly.)

2. THIS COURT ORDERS that until the security required by this order has been given, the plaintiff may not take any step in the action, except an appeal from this order (or as otherwise ordered).

(Signature of judge, officer or registrar)

## FORM 58A

## NOTICE OF APPOINTMENT FOR ASSESSMENT OF COSTS

*(General heading)*

## NOTICE OF APPOINTMENT FOR ASSESSMENT OF COSTS

TO THE PARTIES

I HAVE MADE AN APPOINTMENT to assess the costs of  
*(identify party)*, a copy of whose bill of costs is attached  
to this notice, on *(day)*, *(date)*, at *(time)*, at *(address)*.

Date \_\_\_\_\_

\_\_\_\_\_  
Assessment officer

TO *(Name and address of  
solicitor or party  
on whom notice is  
served)*

FORM 58B

NOTICE TO DELIVER A BILL OF COSTS FOR ASSESSMENT

*(General heading)*

NOTICE TO DELIVER A BILL OF COSTS FOR ASSESSMENT

TO THE PARTIES

I HAVE MADE AN APPOINTMENT, at the request of *(identify party who obtained appointment)* to assess the costs of *(identify party entitled to costs and what costs are to be assessed)* on *(day)*, *(date)*, at *(time)*, at *(address)*.

TO *(identify party entitled to costs)*

YOU ARE REQUIRED to file your bill of costs with me and serve your bill of costs on every party interested in the assessment at least seven days before the above date.

Date \_\_\_\_\_

\_\_\_\_\_  
Assessment officer

TO *(Name and address of solicitor or party on whom notice is served)*



## FORM 58C

## CERTIFICATE OF ASSESSMENT OF COSTS

*(General heading)*

## CERTIFICATE OF ASSESSMENT OF COSTS

I CERTIFY that I have assessed the party and party costs of *(identify party)* in this proceeding *(or as may be)* under the authority of *(give particulars of order or specify rule or statutory provision)*, and I ALLOW THE SUM OF \$.....

Date \_\_\_\_\_

\_\_\_\_\_  
Assessment officer

## FORM 59A

## ORDER

*(Court file no.)**(Court)**(Name of judge or officer)**(Day and date order made)**(Court seal)**(Title of proceeding)*

## ORDER

THIS MOTION, made by *(identify moving party)* for *(state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order)*, *(where applicable, add made without notice,)* was heard this day *(or heard on (date))*, at *(place)*, *(recite any particulars necessary to understand the order)*.

ON READING the *(give particulars of the material filed on the motion)* and on hearing the submissions of counsel for *(identify parties)*, *(where applicable, add (identify party) appearing in person or no one appearing for (identify party), although properly served as appears from (indicate proof of service))*,

1. THIS COURT ORDERS that .....

2. THIS COURT ORDERS that .....

*(In an order for the payment of money on which postjudgment interest is payable, add:)*

THIS ORDER BEARS INTEREST at the rate of ..... per cent per year commencing on *(date)*.

*(Signature of judge, officer or registrar)*

## Form 59B

## JUDGMENT

(Court file no.)

(Court)

(Name of judge or officer) (Day and date judgment given)

(Court seal) (Title of proceeding)

## JUDGMENT

(Judgment after trial or hearing of application)

THIS ACTION (or APPLICATION) was heard this day (or heard on (date)) without (or with) a jury at (place) in the presence of counsel for all parties (where applicable, add (identify party) appearing in person, or no one appearing for (identify party) although properly served as appears from (indicate proof of service)),

(Action) ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of counsel for the parties,

(Application) ON READING THE NOTICE OF APPLICATION AND THE EVIDENCE FILED BY THE PARTIES, (where applicable, add on hearing the oral evidence presented by the parties,) and on hearing the submissions of counsel for the parties,

(Judgment on motion)

THIS MOTION, made by (identify moving party), for (state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the judgment), (where applicable, add made without notice,) was heard this day (or heard on (date)), at (place), (recite any particulars necessary to understand the judgment).

ON READING THE (give particulars of the material filed on the motion) and on hearing the submissions of counsel for (identify parties), (where applicable, add (identify party) appearing in person or no one appearing for (identify party), although properly served as appears from (indicate proof of service)),

1. THIS COURT ORDERS (or DECLARES, if applicable) (where applicable, add: AND ADJUDGES) that .....

2. THIS COURT ORDERS (or as may be) that .....

(In a judgment for the payment of money on which postjudgment interest is payable add:)

THIS JUDGMENT BEARS INTEREST at the rate of ..... per cent per year commencing on (date).

(Signature of judge, officer or registrar)

FORM 60A

WRIT OF SEIZURE AND SALE

*(General heading)*

*(Court seal)*

WRIT OF SEIZURE AND SALE

TO the Sheriff of the *(name of county or district)*

Under an order of this court made on *(date)*, in favour of *(name of creditor)*, YOU ARE DIRECTED to seize and sell the real and personal property within your county or district of *(name of debtor)* and to realize from the seizure and sale the following sums:

- (a) \$..... and interest at ..... per cent per year commencing on *(date)*;

*(Where the writ is for two or more periodic or instalment payments, substitute:)*

*Amount of  
payment*

*Due date*

(a)

\_\_\_\_\_

\$..... and interest at ..... per cent per year on the payments in default commencing on the date of default;

- (b) \$..... for costs together with interest at ..... per cent per year commencing on *(date)*; and

- (c) your fees and expenses in enforcing this writ.

YOU ARE DIRECTED to pay out the proceeds according to law and to report on the execution of this writ if required by the party or solicitor who filed it.

Date \_\_\_\_\_

Issued by \_\_\_\_\_

Local registrar

Address of  
court office \_\_\_\_\_

\_\_\_\_\_



(Short title of proceeding)

(Court file no.)

FEES		
Fee	Item	Officer
RENEWAL		
Date	Officer	

(Name of court)

Proceeding commenced at .....

WRIT OF SEIZURE AND SALE

Creditor's name

Creditor's  
Address

Solicitor's name  
Solicitor's  
address and  
telephone no.

## FORM 60B

## WRIT OF SEQUESTRATION

*(General heading)**(Court seal)*

## WRIT OF SEQUESTRATION

TO the Sheriff of the *(name of county or district)*

Under an order of this court made on *(date)* on motion of *(name of moving party)*, YOU ARE DIRECTED to take possession of and hold the following property within your county or district of *(name of person against whom order was made)*: *(Set out a description of the property to be taken and held.)*

AND YOU ARE DIRECTED to collect and hold any income from the property until further order of this court.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

## FORM 60C

## WRIT OF POSSESSION

*(General heading)**(Court seal)*

## WRIT OF POSSESSION

TO the Sheriff of the *(name of county or district)*

Under an order of this court made on *(date)* in favour of *(name of party who obtained order)*, YOU ARE DIRECTED to enter and take possession of the following land and premises in your county or district: *(Set out a description of the land and premises.)*

AND YOU ARE DIRECTED to give possession of the above land and premises without delay to *(name of party who obtained order)*.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

Renewed by order made on *(date)*.

\_\_\_\_\_  
Local registrar

FORM 60D

WRIT OF DELIVERY

*(General heading)*

*(Court seal)*

WRIT OF DELIVERY

TO the Sheriff of the *(name of county or district)*

Under an order of this court made on *(date)*, YOU ARE DIRECTED to seize from *(name of party)* and to deliver without delay to *(name of party who obtained order)* the following personal property: *(Set out a description of the property to be delivered.)*

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_



## FORM 60E

## REQUEST TO RENEW

*(General heading)*

## REQUEST TO RENEW

TO the Sheriff of the *(name of county or district)*

YOU ARE REQUESTED TO RENEW the writ of seizure and sale issued on *(date)* in this proceeding and filed in your office for a period of six years from the date of renewal.

*(Date)**(Signature of party or solicitor)**(Name, address and telephone  
number of party or solicitor)*

Form 60F

DIRECTION TO ENFORCE  
WRIT OF SEIZURE AND SALE

*(General heading)*

DIRECTION TO ENFORCE WRIT

TO the Sheriff of the *(name of county or district)*

Under an order of this court in favour of *(name of creditor)* made on *(date)*, *(name of debtor)* was ordered to pay the sum of \$..... *(where applicable, add each month or as may be)* with interest at the rate of ..... per cent per year commencing on *(date)* and costs of \$..... *(as fixed or assessed)* with interest at the rate of ..... per cent per year commencing on *(date)*. Since the order was made, the creditor has received the following payments:

Date of payment	Payment
-----------------	---------

There remains owing today under the order:

Amount of principal or costs	Due date	Amount of interest
---------------------------------	----------	--------------------

\$ _____	_____
----------	-------

Under rule 60.19 of the Rules of Civil Procedure, the creditor is entitled to costs in the amount of \$.....

YOU ARE DIRECTED to enforce the writ of seizure and sale issued on *(date)* and filed in your office for a sum sufficient to satisfy the total of the amounts set out above, together with subsequent interest, and your fees and expenses.

<i>(Date)</i>	<i>(Signature of party or solicitor)</i>
	<i>(Name, address and telephone number of party or solicitor)</i>

## FORM 60G

## NOTICE OF GARNISHMENT

(Court file no.)

(Court)

B E T W E E N :

(name)

Creditor

and

(Court seal)

(name)

Debtor

and

(name)

Garnishee

## NOTICE OF GARNISHMENT

TO (name and address of garnishee)

A LEGAL PROCEEDING in this court between the creditor and the debtor has resulted in an order that the debtor pay a sum of money to the creditor. The creditor claims that you owe or will owe a debt to the debtor. The creditor has had this notice of garnishment directed to you as garnishee in order to seize any debt that you owe or will owe to the debtor.

YOU ARE REQUIRED TO PAY to the Sheriff of the (name of county or district),

- (a) within ten days after this notice is served on you, all debts now payable by you to the debtor; and
- (b) within ten days after they become payable, all debts that become payable by you to the debtor within six years after this notice is served on you,

subject to the exemptions provided by section 7 of the *Wages Act*. The total amount of all your payments to the sheriff is not to exceed \$.....

EACH PAYMENT MUST BE SENT with a copy of the attached garnishee's payment notice to the sheriff at the address shown below.

IF YOU DO NOT PAY THE TOTAL AMOUNT OF \$..... WITHIN TEN DAYS after this notice is served on you, you must within that time serve on the creditor and the debtor and file with the court a garnishee's statement in Form 60H attached to this notice.

IF YOU FAIL TO OBEY THIS NOTICE, THE COURT MAY MAKE AND ENFORCE AN ORDER AGAINST YOU for payment of the amount set out above and the costs of the creditor.

IF YOU MAKE PAYMENT TO ANYONE OTHER THAN THE SHERIFF, YOU MAY BE LIABLE TO PAY AGAIN.

TO THE CREDITOR, THE DEBTOR AND THE GARNISHEE

Any party may make a motion to the court to determine any matter in relation to this notice of garnishment.

Date _____	Issued by _____ Local registrar
	Address of court office _____ _____

Creditor's address _____ _____	Debtor's address _____ _____	Sheriff's address _____ _____
telephone no. _____		

\* \* \* \* \*

*(The top portion of the garnishee's payment notice is to be completed by the creditor before the notice of garnishment is issued. Where it is anticipated that more than one payment will be made by the garnishee, the creditor should provide extra copies of the payment notice.)*

GARNISHEE'S PAYMENT NOTICE

Make payment by cheque or money order payable to the Sheriff of the (name of county or district) and send it, along with a copy of this payment notice, to (address).

Court _____	File no. _____
Office at _____	
Creditor _____	
Debtor _____	
Garnishee _____	

TO BE COMPLETED BY GARNISHEE FOR EACH PAYMENT

Date of payment \_\_\_\_\_  
Amount enclosed \$ \_\_\_\_\_



## FORM 60H

## GARNISHEE'S STATEMENT

*(The general heading on this form is to be completed by the creditor and the form is to be attached to each notice of garnishment before the notice of garnishment is issued.)*

*(General heading as in Form 60G)*

## GARNISHEE'S STATEMENT

1. I/We acknowledge that I/we owe or will owe the debtor the sum of \$....., payable on (date), because *(Give reason why you owe the debtor money. If you are making payment of less than the amount stated in line 2 of this paragraph, give a full explanation of the reason. If you owe the debtor wages, state how often the debtor is paid. State the gross amount of the debtor's wages before any deductions and the net amount after all deductions and attach a copy of a pay slip.)*

2. *(If you do not owe the debtor money, explain why. Give any other information that will explain your financial relationship with the debtor.)*

3. *(If you have been served with any other notice of garnishment or a writ of execution against the debtor, give particulars.)*

Name of creditor	Location of Sheriff	Date of notice or writ	Date of service on you
------------------	------------------------	---------------------------	---------------------------

4. *(If you have been served outside Ontario and you wish to object on the ground that service outside Ontario was improper, give particulars of your objection.)*

Date _____	Signature of or for garnishee _____
	Name of garnishee _____
	Address _____
	_____
	Telephone number _____

## FORM 60I

## NOTICE OF TERMINATION OF GARNISHMENT

*(General heading as in Form 60G)*

## NOTICE OF TERMINATION OF GARNISHMENT

TO *(name of garnishee)*

AND TO the Sheriff of the *(name of county or district)*

THE NOTICE OF GARNISHMENT DATED *(date)* SERVED ON YOU IS  
TERMINATED and you are not to make any further payments under  
it.

*(Date)*

*(Signature of creditor or solicitor)*

*(Name, address and telephone number  
of creditor or solicitor)*

## FORM 60J

## WARRANT FOR ARREST (CONTEMPT)

*(Court file no.)**(Court)**(Name of judge)**(Day and date)**(Court seal)*      *(Title of proceeding)*

## WARRANT FOR ARREST

TO ALL SHERIFFS and other peace officers in Ontario  
AND TO the officers of all correctional institutions in Ontario

WHEREAS it appears that *(name)*, of *(address)* may be in contempt of this court,

AND WHEREAS I am of the opinion that attendance of *(name)* at the hearing of the motion for a contempt order is necessary in the interest of justice and it appears that he *(or she)* is not likely to attend voluntarily,

YOU ARE ORDERED TO ARREST and bring *(name)* before the court for the hearing of the motion for a contempt order, and if the court is not then sitting or if he *(or she)* cannot be brought forthwith before the court, you are ordered to deliver him *(or her)* to a provincial correctional institution or other secure facility, to be admitted and detained there until he *(or she)* can be brought before the court.

*(Signature of judge)*

## FORM 60K

## WARRANT OF COMMITTAL

(Court file no.)

(Court)

(Name of judge)

(Day and date)

(Court seal)

(Title of proceeding)

## WARRANT OF COMMITTAL

TO ALL SHERIFFS and other peace officers in Ontario  
AND TO THE OFFICERS OF (name of correctional institution)

WHEREAS I have found that (name) is in contempt of this  
court and have ordered imprisonment as punishment for the  
contempt,

YOU ARE ORDERED to take (name) to (name of correctional  
institution), and admit and detain him or her there for (or  
until) (give particulars of sentence).

(Signature of judge)



## FORM 60L

## NOTICE OF CLAIM

*(General heading)*

TO THE CREDITORS OF *(name of debtor)*

I have received notice of a claim by *(name)*, of *(address)*, in respect of property or the proceeds of property taken or intended to be taken in execution against the debtor. Particulars of the claim are as follows: *(Give particulars.)*

You are required to give me notice in writing, within seven days after receiving this notice, stating whether you admit or dispute the claim.

*(Date)*

*(Name, address and telephone  
number of sheriff)*

TO *(Name and address of each  
creditor or solicitor)*

## FORM 60M

## SHERIFF'S REPORT

*(General heading)*

## SHERIFF'S REPORT

In response to your request of *(date)* concerning the execution of the writ of seizure and sale *(or possession, delivery or sequestration)* against *(name of party)* filed with me, I report that I have taken the following action, with the following results: *(Give particulars.)*

*(Date)**(Signature of sheriff)*

TO *(Name and address of  
creditor or solicitor)*

## FORM 61A

## NOTICE OF APPEAL TO AN APPELLATE COURT


*(General heading, with title of proceeding in accordance with Form 61B)*

## NOTICE OF APPEAL

THE *(identify party)* APPEALS to the Court of Appeal *(or Divisional Court)* from the judgment *(or order)* of *(name of judge, officer or tribunal)* dated *(date)*.

THE APPELLANT ASKS that the judgment be set aside and judgment be granted as follows *(or that the judgment be varied as follows, or as may be)*: *(Set out briefly the relief sought.)*

THE GROUNDS OF APPEAL are as follows: *(Set out briefly the grounds of appeal.)*

 *(Divisional Court appeals)* The appellant requests that this appeal be heard at *(place)*.

*(Date)*

*(Name, address and telephone  
number of appellant's solicitor  
or appellant)*

TO *(Name and address of  
respondent's solicitor,  
or respondent)*

## FORM 61B

## TITLE OF PROCEEDING IN APPEALS

*(Appeal in an action)*

B E T W E E N:

*(name)*

Plaintiff  
(Appellant) *(or (Respondent))*

and

*(name)*

Defendant  
(Respondent) *(or (Appellant))*

*(Appeal in an application)*

B E T W E E N:

*(name)*

Applicant  
(Appellant) *(or (Respondent in appeal))*

and

*(name)*

Respondent  
(Respondent in appeal) *(or (Appellant))*

APPLICATION UNDER *(statutory provision or rule under which the application is made)*

*(Where there are multiple parties in the proceeding at first instance and only some of them are parties to the appeal, include the names of all of the parties at first instance and underline the names of the parties to the appeal.)*



## FORM 61C

## APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

*(General heading, with title of proceeding in accordance with Form 61B)*

## APPELLANT'S CERTIFICATE

The appellant certifies that the following evidence is not required for the appeal, in the appellant's opinion:

1. Exhibits numbers .....
2. The evidence of *(names of witnesses)*.

*(Date)*

*(Name, address and telephone  
number of appellant's  
solicitor or appellant)*

TO *(Name and address of  
respondent's solicitor  
or respondent)*

## FORM 61D

## RESPONDENT'S CERTIFICATE RESPECTING EVIDENCE

*(General heading, with title of proceeding in accordance with Form 61B)*

## RESPONDENT'S CERTIFICATE

The respondent confirms the appellant's certificate  
*(where necessary, add except for the following:*

1. Exhibits numbers ..... are not required for the appeal.
2. The evidence of *(names of witnesses)* is not required for the appeal.
3. Exhibits numbers ..... are required for the appeal.
4. The evidence of *(names of witnesses)* is required for the appeal.)

*(Date)*

*(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address of  
appellant's solicitor  
or appellant)*

## FORM 61E

## NOTICE OF CROSS-APPEAL

*(General heading, with title of proceeding in accordance with Form 61B)*

## NOTICE OF CROSS-APPEAL

THE RESPONDENT CROSS-APPEALS in this appeal and asks that the judgment be set aside and judgment be granted as follows: (or that the judgment be varied as follows, or as may be):  
*(Set out briefly the relief sought.)*

THE GROUNDS FOR THIS CROSS-APPEAL are as follows: *(Set out briefly the grounds of cross-appeal.)*

*(Date)*

*(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address of  
appellant's solicitor  
or appellant)*

## FORM 61F

## SUPPLEMENTARY NOTICE OF APPEAL OR CROSS-APPEAL

*(General heading, with title of proceeding in accordance with Form 61B)*

## SUPPLEMENTARY NOTICE OF APPEAL (or CROSS-APPEAL)

The appellant (or respondent) amends the notice of appeal (or cross-appeal) dated (date) in the following manner: (Give particulars of the amendment.)

(Date)

(Name, address and telephone  
number of solicitor or  
party serving notice)

TO (Name and address of  
solicitor or party on  
whom notice is served)



## FORM 61G

## NOTICE OF LISTING FOR HEARING (APPEAL)

*(General heading, with title of proceeding in accordance with Form 61B).*

## NOTICE OF LISTING FOR HEARING

THIS APPEAL HAS BEEN PERFECTED and has been listed for hearing at *(place)*. You may ascertain from my office the approximate date of hearing.

Date \_\_\_\_\_

Signed by \_\_\_\_\_

Registrar of the Court of  
Appeal *(or* Divisional Court)  
Osgoode Hall  
130 Queen Street West  
Toronto, Ontario  
M5H 2N5

965-5548

TO *(Name and address of  
every person listed  
in the certificate  
of perfection)*

## FORM 61H

## CERTIFICATE OF COMPLETENESS OF APPEAL BOOKS

*(General heading, with title of proceeding in accordance with  
Form 61B)*

## CERTIFICATE OF COMPLETENESS

I, *(name)*, solicitor for the appellant *(or appellant)*,  
certify that the appeal books in this appeal are complete and  
legible.

*(Date)*

*(Signature of appellant's solicitor  
or appellant)*

*(Name, address and telephone number  
of appellant's solicitor or appellant)*

## FORM 61I

## ORDER DISMISSING APPEAL OR CROSS-APPEAL FOR DELAY

*(General heading, with title of proceeding in accordance with Form 61B)*

## ORDER DISMISSING APPEAL (or CROSS-APPEAL)

The appellant (or respondent) has not *(give particulars of appellant's or respondent's default under rule 61.12)* and has not cured the default, although given notice under rule 61.12 to do so.

IT IS ORDERED that this appeal (or cross-appeal) be dismissed for delay, with costs.

Date \_\_\_\_\_

Signed by \_\_\_\_\_

Registrar of the Court of  
Appeal (or Divisional Court)

## FORM 61J

## NOTICE OF ABANDONMENT OF APPEAL OR CROSS-APPEAL

*(General heading, with title of proceeding in accordance with Form 61B)*

## NOTICE OF ABANDONMENT

The appellant (or respondent) abandons this appeal  
(or cross-appeal).

*(Date)*

*(Name, address and telephone number  
of solicitor or party serving notice)*

TO *(Name and address of  
solicitor or party  
on whom notice is  
served)*



## FORM 61K

## NOTICE OF ELECTION TO PROCEED WITH CROSS-APPEAL

*(General heading, with title of proceeding in accordance with Form 61B)*

## NOTICE OF ELECTION

The respondent elects to proceed with the cross-appeal.

*(Date)*

*(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address of  
appellant's solicitor  
or appellant)*

## FORM 62A

## NOTICE OF APPEAL TO A HIGH COURT JUDGE

*(General heading)*

## NOTICE OF APPEAL

THE *(identify party)* APPEALS to a High Court judge from the order *(or certificate)* of *(name of judge or officer)* dated *(date)*.

THE APPEAL WILL BE HEARD ON *(day)*, *(date)*, at *(time)*, at *(address of court house)*.

THE *(identify party)* ASKS *(state the precise relief sought)*.

THE GROUNDS OF APPEAL are as follows: *(Set out briefly the grounds of appeal.)*

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
serving notice)*

TO *(Name and address of  
solicitor or party on  
whom notice is served)*

## FORM 63A

## CERTIFICATE OF STAY

*(General heading)**(Court seal)*

## CERTIFICATE OF STAY

The Registrar of the Court of Appeal (or Divisional Court) (or the local registrar of this court at (place)) certifies that the order (or judgment) of (name of judge or officer) dated (date) has been stayed by the delivery of a notice of appeal from the order (or judgment) (or by order of (name of judge) dated (date)). (Where an order is made under Rule 63 limiting the stay, give particulars.)

Date \_\_\_\_\_

Issued by \_\_\_\_\_

Registrar

Address of  
court office \_\_\_\_\_

\_\_\_\_\_

FORM 64A

REQUEST TO REDEEM

*(General heading)*

REQUEST TO REDEEM

The defendant (*name*) requests an opportunity to redeem the mortgaged property.

*(Date)*

*(Name, address and telephone number  
of defendant's solicitor or defendant)*

*(Where the defendant is a subsequent encumbancer, add:)*

AFFIDAVIT VERIFYING CLAIM

I, (*full name of deponent*), of the (*City, Town, etc.*)  
of ....., in the (*County, Regional Municipality, etc.*) of  
....., (*where the deponent is a party or the solicitor,  
officer, director, member or employee of a party, set out the  
deponent's capacity*), MAKE OATH AND SAY (*or AFFIRM*):

1. There is now due to me under a mortgage on (*or  
an execution against or a construction lien registered against  
or as may be*) the mortgaged property,

(a) for principal	\$.....
(b) for interest ( <i>set out particulars</i> )	\$.....
(c) ( <i>set out particulars of any other amounts due</i> )	\$.....
Total now due	\$.....

Sworn (*etc.*)



## FORM 64B

## DEFAULT JUDGMENT FOR FORECLOSURE WITH A REFERENCE

*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, no request to redeem or request for sale having been filed (or the defendant(s) *(name(s))* having filed a request to redeem) and the defendant(s) having been noted in default, and the plaintiff wishing a reference (or the registrar having decided to sign judgment with a reference),

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for redemption or foreclosure of the equity of redemption in the mortgaged property described in the attached schedule, and that for these purposes this action be referred to the master (or as may be) at *(place)*.

*(Where judgment is for possession, add:)*

2. IT IS ORDERED AND ADJUDGED that the defendant *(name)* deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt and the registrar is to take the account, add the following two paragraphs:)*

3. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith pay to the plaintiff the sum of \$....., being the amount due to the plaintiff today for principal, interest and costs; and on payment of the amount due to the plaintiff, the plaintiff convey the mortgaged property to the defendant or as the defendant directs in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate of *(rate claimed in statement of claim)* per cent per year from its date.

*(Where judgment is for payment of the mortgage debt and the plaintiff wishes the account to be taken on the reference or the registrar refers the taking of the account, substitute the following two paragraphs:)*

Form 64B, p.2

3. IT IS ORDERED AND ADJUDGED that the defendant (*name*) pay to the plaintiff, forthwith after the confirmation of the report on the reference, the amount found due for principal, interest and costs in accordance with the report, and on payment of the amount due to the plaintiff, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

## FORM 64C

## DEFAULT JUDGMENT FOR IMMEDIATE FORECLOSURE

*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, no request to redeem or request for sale having been filed, the defendant(s) having been noted in default, and the plaintiff not wishing a reference,

1. IT IS ORDERED AND ADJUDGED that the right, title and equity of redemption of the defendant(s) *(name(s))* to and in the mortgaged property described in the attached schedule are foreclosed.

*(Where judgment is for possession, add:)*

2. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt, add the following two paragraphs:)*

3. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith pay to the plaintiff the sum of \$....., being the amount due to the plaintiff today for principal, interest and costs.

THIS JUDGMENT BEARS INTEREST at the rate of *(rate claimed in statement of claim)* per cent per year from its date.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

FORM 64D

DEFAULT JUDGMENT FOR FORECLOSURE WITHOUT A REFERENCE

(General heading)

(Court seal)

JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, no request for sale having been filed, the defendant(s) (name(s)) having filed a request to redeem and the defendant(s) having been noted in default, and the account having been taken in the presence of the solicitor for the plaintiff (or the plaintiff) and the solicitor(s) for the defendant(s) (where applicable, add (identify party) appearing in person or no one appearing for the defendant (name), although served with notice of the taking of the account as appears from the affidavit of (name), filed),

1. I FIND that the following sums are due to the plaintiff from the defendant (name of owner of equity of redemption) on (redemption date), the day I have fixed for payment under the mortgage in question in this action:

- (a) for principal \$.....
- (b) for taxes paid \$.....
- (c) for premiums of insurance paid \$.....
- (d) for maintenance costs paid \$.....
- (e) for heating costs paid \$.....
- (f) for utility costs paid \$.....  
(add any other costs in similar fashion)
- (g) for interest up to (date of judgment) \$.....
- (h) for costs of this action \$.....
- (i) for subsequent interest on the principal at the rate of ..... per cent per year up to the day fixed for payment \$.....

making a total amount due on (redemption date) of \$.....

2. IT IS ORDERED AND ADJUDGED that:

- (a) on payment of the sum of \$ (total amount due from paragraph 1) into the (name of financial institution) at (address), to the joint credit of the plaintiff and the Accountant of the Supreme Court (or the local registrar of the District Court); or
- (b) on recovery by the plaintiff of the amount due under paragraph 6 of this judgment, together with post-judgment interest,

Form 64D, p.2

on or before (*redemption date*), the plaintiff shall convey the mortgaged property described in the attached schedule to the defendant (*name*) or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

(Delete clause (b) where the judgment does not order payment of the mortgage debt.)

(Where more than one party is entitled to redeem, add:)

3. IT IS ORDERED AND ADJUDGED that the defendant (*name of encumbrancer*) is entitled to the first right to redeem and the defendant (*name*) is entitled to the second right to redeem (*and so on*) and the defendant (*name of owner of equity of redemption*) is entitled to the last right to redeem.

(Foreclosure on default in payment)

4. IT IS ORDERED AND ADJUDGED that, on default in payment as required by paragraph 2, the right, title and equity of redemption of the defendant(s) to and in the mortgaged property described in the attached schedule are foreclosed.

(Where judgment is for possession, add:)

5. IT IS ORDERED AND ADJUDGED that the defendant (*name*) forthwith deliver to the plaintiff or as the plaintiff directs, possession of the mortgaged property, or of such part of it as is in the possession of the defendant.

(Where judgment is for payment of the mortgage debt, add the following two paragraphs:)

6. IT IS ORDERED AND ADJUDGED that the defendant (*name*) forthwith pay to the plaintiff the sum of \$....., being the amount found due to the plaintiff today for principal, interest and costs.

THIS JUDGMENT BEARS INTEREST at the rate of (*rate claimed in statement of claim*) per cent per year from its date.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)



## FORM 64E

## FINAL ORDER OF FORECLOSURE

(Court)

(Court file no.)

(Name of judge or officer)

(Day and date)

(Court seal)

(Title of proceeding)

## FINAL ORDER OF FORECLOSURE

THIS MOTION made by (identify moving party), without notice, was heard this day.

(Order following judgment granting redemption period)

ON READING the judgment in this action dated (date), (where there is an order fixing a new day for payment, add: the order for a new day for payment dated (date),) (where a notice of change of account has been delivered, add: the notice of change of account, with proof of service,) and the certificate of the (title) of the (financial institution) at (place), with affidavit of execution, and the affidavit of the plaintiff, and on hearing the submissions of counsel for the plaintiff, and since the defendant(s) entitled to redeem has (have) not redeemed the mortgaged property,

1. IT IS ORDERED that the right, title and equity of redemption of the defendant(s) (name(s)) of those who failed to file a request to redeem, to attend and prove a claim on the taking of account or to redeem the mortgaged property) to and in the mortgaged property described in the attached schedule are foreclosed.

(Order following report granting redemption period)

ON READING the judgment in this action dated (date) and the report in this action dated (date) and confirmed on (date), with proof of service, (where there is an order fixing a new day for payment, add: and the order for a new day for payment dated (date), with proof of service,) (where a notice of change of account has been delivered, add: the notice of change of account, with proof of service, and the certificate of the (title) of the (financial institution) at (place), with affidavit of execution,) and the affidavit of the plaintiff, and on hearing the submissions of counsel for the plaintiff, and since the defendant(s) entitled to redeem has (have) not redeemed the mortgaged property,

1. IT IS ORDERED that the right, title and equity of redemption of the defendant(s) (names of those who failed to file a request to redeem, to attend and prove a claim on the reference or to redeem the mortgaged property) to and in the mortgaged property described in the attached schedule are foreclosed.

Form 64E, p.2

*(Order following report granting no redemption period)*

ON READING the judgment in this action dated *(date)* and the report in this action dated *(date)* and confirmed on *(date)*, with proof of service, and the affidavit of the plaintiff, and on hearing the submissions of counsel for the plaintiff, and since no defendant is entitled to redeem,

1. IT IS ORDERED that the right, title and equity of redemption of the defendant(s) *(names)* to and in the mortgaged property described in the attached schedule are foreclosed.

*(Order following redemption of plaintiff by encumbrancer)*

ON READING the judgment in this action dated *(date)*, *(where there is a report, add: the report on the reference in this action dated (date) and confirmed on (date), with proof of service), the certificate of the (title) of the (financial institution) at (place), with affidavit of execution, and the affidavit of the defendant (name of defendant who has redeemed), on hearing the submissions of counsel for the defendant, and since the defendant has redeemed the plaintiff, and has obtained an assignment of the judgment and the mortgage and has registered the latter, and since the defendants (names) are in default,*

1. IT IS ORDERED that the right, title and equity of redemption of the defendant(s) *(names of those who failed to file a request to redeem, to attend and prove a claim on the reference or to redeem the mortgaged property)* to and in the mortgaged property described in the attached schedule are foreclosed.

*(Note: The preceding types of order in this form, which are for use in a foreclosure action, may be adapted for a redemption action by substituting "defendant" for "plaintiff" and "plaintiff" for "defendant", whenever those words appear.)*

*(Order following report in redemption action, where necessary to refer back to master (or as may be) to complete redemption.)*

ON READING the judgment in this action dated *(date)*, the report on the reference in this action dated *(date)* and confirmed on *(date)*, with proof of service, the certificate of the *(title)* of the *(financial institution)* at *(place)*, with affidavit of execution, and the affidavit of the defendant *(name)*, and on hearing the submissions of counsel for the defendant, and since the plaintiff has failed to redeem *(where there are subsequent encumbrancers and the defendant wishes to foreclose them, add: and it is necessary to take accounts between the defendants),*

1. IT IS ORDERED that the right, title and equity of redemption of the plaintiff to and in the mortgaged property described in the attached schedule are foreclosed.

*(Where subsequent encumbrancers are to be foreclosed)*

2. IT IS ORDERED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for redemption by or foreclosure against any subsequent encumbrancers, and that for these purposes this action be referred to the master (or as may be) at (place).

*(Where accounts are to be taken)*

3. IT IS ORDERED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for the adjustment of the relative rights and liabilities of the original defendants.

*(Signature of judge, master or registrar)*

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

## FORM 64F

## REQUEST FOR SALE

*(General heading)*

## REQUEST FOR SALE

The defendant *(name)* requests a sale of the mortgaged property.

*(Where the defendant is a subsequent encumbrancer, add:)*

Attached is a certificate of the Accountant of the Supreme Court of Ontario *(or the local registrar of the court at (place))* stating that the defendant has paid into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale.

*(Date)*

*(Name, address and telephone  
number of defendant's solicitor  
or defendant)*

*(Where the defendant is a subsequent encumbrancer, add:)*

## AFFIDAVIT VERIFYING CLAIM

I, *(full name of deponent)*, of the *(City, Town, etc.)* of ....., in the *(County, Regional Municipality, etc.)* of ....., *(where the deponent is a party or the solicitor, officer, director, member or employee of a party, set out the deponent's capacity)*, MAKE OATH AND SAY *(or AFFIRM)*:

1. There is now due to me under a mortgage on *(or an execution against or a construction lien registered against or as may be)* the mortgaged property,

(a) for principal	\$.....
(b) for interest <i>(set out particulars)</i>	\$.....
(c) <i>(set out particulars of any other amounts due)</i>	\$.....

Total now due	\$.....
---------------	---------

Sworn *(etc.)*

## FORM 64G

DEFAULT JUDGMENT FOR SALE WITH A REDEMPTION PERIOD  
(ACTION CONVERTED FROM FORECLOSURE TO SALE)*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, the defendant (*name*) having filed a request for sale, the defendant(s) having been noted in default and the defendant(s) (*name(s)*) having filed a request to redeem,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for redemption or sale of the mortgaged property described in the attached schedule, and that for these purposes this action be referred to the master (*or as may be*) at (*place*).

*(Where judgment is for possession, add:)*

2. IT IS ORDERED AND ADJUDGED that the defendant (*name*) deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt and the registrar is to take the account, add the following two paragraphs:)*

3. IT IS ORDERED AND ADJUDGED that the defendant (*name*) forthwith pay to the plaintiff the sum of \$....., being the amount due to the plaintiff today for principal, interest and costs; and that, on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate of (*rate claimed in statement of claim*) per cent per year from its date.

*(Where judgment is for payment of the mortgage debt and the plaintiff wishes the account to be taken on a reference or the registrar refers the taking of the account, substitute the following two paragraphs:)*

3. IT IS ORDERED AND ADJUDGED that the defendant (*name*) pay to the plaintiff, forthwith after the confirmation of the report on the reference, the amount found due for principal, interest and costs in accordance with the report; and that on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.



Form 64G, p.2

THIS JUDGMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

## FORM 64H

DEFAULT JUDGMENT FOR IMMEDIATE SALE  
(ACTION CONVERTED FROM FORECLOSURE TO SALE)*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s) filed, the defendant *(name)* having filed a request for sale, the defendant(s) having been noted in default and no request to redeem having been filed *(or a request to redeem having been filed by the defendant (name of subsequent encumbrancer))*,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for the immediate sale of the mortgaged property described in the attached schedule without a redemption period, and that for these purposes this action be referred to the master *(or as may be)* at *(place)*.

2. IT IS ORDERED AND ADJUDGED that the purchasers pay the purchase money into court to the credit of this action and that the purchase money be applied in payment of what is found due to the plaintiff, together with subsequent interest and subsequent costs to be computed and fixed or assessed by the master *(or as may be)* and that the master *(or as may be)* also determine those parties or persons entitled to the balance of the money and the amounts to which they are entitled.

*(Where judgment is for possession, add:)*

3. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property, or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt and the registrar is to take the account, add the following two paragraphs:)*

4. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith pay to the plaintiff the sum of \$....., being the amount due to the plaintiff today for principal, interest and costs; and that on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate of *(rate claimed in statement of claim)* per cent per year from its date.

Form 64H, p.2

*(Where judgment is for payment of the mortgage debt and the plaintiff wishes the account to be taken on the reference or the registrar refers the taking of the account, substitute the following two paragraphs:)*

4. IT IS ORDERED AND ADJUDGED that the defendant (name) pay to the plaintiff, forthwith after the confirmation of the report on the reference, the amount found due for principal, interest and costs in accordance with the report, and on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

## FORM 64I

DEFAULT JUDGMENT FOR SALE CONDITIONAL ON PROOF OF CLAIM  
(ACTION CONVERTED FROM FORECLOSURE TO SALE)*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed no request to redeem having been filed (or the defendant (name) having filed a request to redeem), the defendant(s) having been noted in default and the defendant (name of subsequent encumbrancer) having filed a request for sale and having paid into court the sum of \$250 as security for costs,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for redemption or sale of the mortgaged property described in the attached schedule and that for these purposes this action be referred to the master (or as may be) at (place).

2. IT IS ORDERED AND ADJUDGED that, if the defendant (name of subsequent encumbrancer) fails to prove a claim on the reference for sale, the master (or as may be) shall proceed as on a reference for redemption or foreclosure.

*(Where judgment is for possession, add:)*

3. IT IS ORDERED AND ADJUDGED that the defendant (name) deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt and the registrar is to take the account, add the following two paragraphs:)*

4. IT IS ORDERED AND ADJUDGED that the defendant (name) forthwith pay to the plaintiff the sum of \$....., being the amount due to the plaintiff today for principal, interest and costs; and that, on payment of the amount due to the plaintiff, the plaintiff convey the mortgaged property to the defendant or as the defendant directs in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate of (rate claimed in statement of claim) per cent per year from its date.

Form 64I, p.2

*(Where judgment is for payment of the mortgage debt and the plaintiff wishes the account to be taken on the reference or the registrar refers the taking of the account, substitute the following two paragraphs:)*

4. IT IS ORDERED AND ADJUDGED that the defendant (name) pay to the plaintiff, forthwith after the confirmation of the report on the reference, the amount found due for principal, interest and costs in accordance with the report, and on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_ Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*



## FORM 64J

## DEFAULT JUDGMENT FOR IMMEDIATE SALE

*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, no request to redeem having been filed and the defendant(s) having been noted in default,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for the immediate sale of the mortgaged property described in the attached schedule without a redemption period, and that for these purposes this action be referred to the master *(or as may be)* at *(place)*.

2. IT IS ORDERED AND ADJUDGED that the purchasers pay the purchase money into court to the credit of this action and that the purchase money be applied in payment of what is found due to the plaintiff, together with subsequent interest and subsequent costs to be computed and fixed or assessed by the master *(or as may be)* and that the master *(or as may be)* also determine those parties or persons entitled to the balance of the money and the amounts to which they are entitled.

*(Where judgment is for possession, add:)*

3. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property, or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt and the registrar is to take the account, add the following two paragraphs:)*

4. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith pay to the plaintiff the sum of \$..... being the amount due to the plaintiff today for principal, interest and costs, and that on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate of *(rate claimed in statement of claim)* per cent per year from its date.

Form 64J, p.2

*(Where judgment is for payment of the mortgage debt and the plaintiff wishes the account to be taken on the reference or the registrar refers the taking of the account, substitute the following two paragraphs:)*

4. IT IS ORDERED AND ADJUDGED that the defendant *(name)* pay to the plaintiff, forthwith after the confirmation of the report on the reference, the amount found due for principal, interest and costs in accordance with the report, and on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_ Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

## FORM 64K

## DEFAULT JUDGMENT FOR SALE WITH A REDEMPTION PERIOD

*(General heading)*

*(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, the defendant(s) having been noted in default and the defendant *(name)* having filed a request to redeem,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for redemption or sale of the mortgaged property described in the attached schedule, and that for these purposes this action be referred to the master *(or as may be)* at *(place)*.

*(Where judgment is for possession, add:)*

2. IT IS ORDERED AND ADJUDGED that the defendant *(name)* deliver to the plaintiff or as the plaintiff directs possession of the mortgaged property or of such part of it as is in the possession of the defendant.

*(Where judgment is for payment of the mortgage debt and the registrar is to take the account, add the following two paragraphs:)*

3. IT IS ORDERED AND ADJUDGED that the defendant *(name)* forthwith pay to the plaintiff the sum of \$....., being the amount due to the plaintiff today for principal, interest and costs; and that, on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

THIS JUDGMENT BEARS INTEREST at the rate of *(rate claimed in statement of claim)* per cent per year from its date.

*(Where judgment is for payment of the mortgage debt and the plaintiff wishes the account to be taken on a reference or the registrar refers the taking of the account, substitute the following two paragraphs:)*

3. IT IS ORDERED AND ADJUDGED that the defendant *(name)* pay to the plaintiff, forthwith after the confirmation of the report on the reference, the amount found due for principal, interest and costs in accordance with the report; and that on payment of the amount due to the plaintiff before the sale takes place, the plaintiff convey the mortgaged property to the defendant or as the defendant directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

Form 64K, p.2

THIS JUDGEMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_

Signed by \_\_\_\_\_  
Local registrarAddress of  
court office \_\_\_\_\_  
\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

## FORM 64L

## FINAL ORDER FOR SALE

*(Court)**(Court file no.)**(Name of judge or officer)**(Day and date)**(Court seal)**(Title of proceeding)*

## FINAL ORDER FOR SALE

THIS MOTION made by the plaintiff, without notice, was heard this day.

ON READING the judgment in this action dated *(date)*, and the report in this action dated *(date)* and confirmed on *(date)*, with proof of service, the certificate of the *(title)* of the *(financial institution)* at *(place)*, with affidavit of execution, and the affidavit of the plaintiff, and on hearing the submissions of counsel for the plaintiff, and since the defendant(s) entitled to redeem has *(have)* not redeemed the mortgaged property,

1. IT IS ORDERED that the mortgaged property described in the attached schedule be sold forthwith as directed by the judgment in this action under the direction of the master *(or as may be)* at *(place)*.

*(Where appropriate, add:)*

2. IT IS ORDERED that the right, title and equity of redemption of the defendants *(names of subsequent encumbrancers who failed to attend and prove a claim on the reference)* to and in the mortgaged property described in the attached schedule are foreclosed.

*(Signature of judge, master or registrar)*

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*



## FORM 64M

## DEFAULT JUDGMENT FOR REDEMPTION

*(General heading)**(Court seal)*

## JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant(s), filed, and the defendant(s) having been noted in default,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs fixed or assessed and steps taken for the redemption of the mortgaged property described in the attached schedule, and that for this purpose this action be referred to the master *(or as may be)* at *(place)*.

2. IT IS ORDERED AND ADJUDGED that, on the plaintiff paying to the defendant *(name of mortgagee)* the amount found due on the mortgage in question, or, if nothing is found due, then forthwith after the confirmation of the report on the reference, the defendant convey the mortgaged property to the plaintiff or as the plaintiff directs, in accordance with section 2 of the *Mortgages Act*, and deliver up all documents relating to the mortgaged property.

3. IT IS ORDERED AND ADJUDGED that if the plaintiff defaults in payment of the amount found due to the defendant *(name of mortgagee)*, the defendant is entitled, on motion without notice, to a final order of foreclosure against the plaintiff or to an order dismissing the action with costs.

4. IT IS ORDERED AND ADJUDGED that if nothing is found due to the defendant *(name of mortgagee)*, the defendant pay the plaintiff's costs of this action and, if any balance is found due from the defendant *(name of mortgagee)* to the plaintiff, that the defendant pay the balance to the plaintiff forthwith after confirmation of the report on the reference.

THIS JUDGMENT BEARS INTEREST at the rate set out in the report on the reference from the date of confirmation of the report.

Date \_\_\_\_\_

Signed by \_\_\_\_\_

Local registrar

Address of  
court office \_\_\_\_\_

\_\_\_\_\_

*(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)*

FORM 64N  
NOTICE OF REFERENCE TO SUBSEQUENT  
ENCUMBRANCER ADDED ON REFERENCE

(Court file no.)

SUPREME COURT OF ONTARIO  
(or DISTRICT COURT OF ONTARIO)

B E T W E E N:

(name)

Plaintiff

and

(name(s))

Defendant(s)

and

(name(s))

Defendant(s) added  
on the reference

NOTICE OF REFERENCE

An action has been commenced by the plaintiff for the foreclosure (or sale) of the mortgaged property described in the attached schedule. I have been directed by the judgment in this action dated (date) (where the judgment is for sale, insert: to conduct a sale of the property and) to inquire whether any person other than the plaintiff has a lien, charge or encumbrance on the property subsequent to the plaintiff's claim. It appears that you may have a lien, charge or encumbrance on the property. I have therefore added you as a defendant in this action.

YOU ARE REQUIRED TO APPEAR before me and prove your claim, either in person or by an Ontario lawyer acting for you, on (day), (date), at (time), at (address). At that time, I shall determine the amount of the claim of the plaintiff, and of the encumbrancers who prove their claims before me. (Where the judgment is for sale without a redemption period, add: At the same time, I shall settle the conditions of sale and advertisement and make any other necessary preparations for the sale of the property.)

If you wish to set aside or vary my order adding you as a defendant or the judgment in this action, you must make a motion to the court within ten days after service on you of this notice (or where the person is to be served outside Ontario, such further time as the referee directs). If you fail to do so, you will be bound by the judgment and the subsequent steps in this action.

Form 64N, p.2

IF YOU FAIL TO ATTEND AND PROVE YOUR CLAIM at the time and place set out above, you will be treated as disclaiming all interest in the property and the action will proceed in your absence and without further notice to you. The property may be dealt with as if you had no claim, and your claim may be foreclosed.

(Date)

(Signature of referee)

TO (Names and addresses  
of defendants added  
on reference who appear  
to be subsequent  
encumbrancers)

(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)

## RULES OF CIVIL PROCEDURE

Form 640

NOTICE OF REFERENCE TO SUBSEQUENT  
ENCUMBRANCER NAMED AS ORIGINAL PARTY

*(Court file no.)*

SUPREME COURT OF ONTARIO  
(or DISTRICT COURT OF ONTARIO)

B E T W E E N:

*(name)*

Plaintiff

and

*(name)*

Defendant(s)

and

*(name(s))*

Defendant(s) added  
on the reference

## NOTICE OF REFERENCE

The judgment in this action directs me *(where the judgment is for sale, insert: to conduct a sale of the mortgaged property and to inquire whether any person other than the plaintiff has a lien, charge or encumbrance on the mortgaged property in question in this action subsequent to the plaintiff's claim, and to take an account of the amount due to the plaintiff and any such person. It appears that you may have a lien, charge or encumbrance on the property.*

YOU ARE REQUIRED TO APPEAR before me and prove your claim, either in person or by an Ontario lawyer acting for you, on *(day)*, *(date)*, at *(time)*, at *(address)*. At that time I shall determine the amount of the claim of the plaintiff, and of the encumbrancers who prove their claims before me. *(Where the judgment is for sale without redemption period, add: At the same time, I shall settle the conditions of sale and advertisement and make any other necessary preparations for the sale of the property.)*

Form 640 p. 2

IF YOU FAIL TO ATTEND AND PROVE YOUR CLAIM at the time and place set out above, you will be treated as disclaiming any lien, charge or encumbrance on the property and the action will proceed in your absence and without further notice to you. The property may be dealt with as if you had no such claim and your claim may be foreclosed.

(Date)

(Signature of referee)

TO (Names and addresses  
of defendants named  
in statement of claim  
who appear to be  
subsequent encumbrancers)



## FORM 64P

## NOTICE OF REFERENCE TO ORIGINAL DEFENDANTS

(Court file no.)

SUPREME COURT OF ONTARIO  
(or DISTRICT COURT OF ONTARIO)

B E T W E E N:

(name)

Plaintiff

and

(name(s))

Defendant(s)

and

(name(s))

Defendant(s) added  
on the reference

## NOTICE OF REFERENCE

The judgment in this action directs me (*where the judgment is for sale, insert:* to conduct a sale of the mortgaged property and to inquire whether any person other than the plaintiff has a lien, charge or encumbrance on the mortgaged property in question in this action subsequent to the plaintiff's claim, and to take an account due to the plaintiff and any such person.

It appears that the persons named in the attached schedule may have a lien, charge or encumbrance on the property (*where the judgment directs the referee to add encumbrancers, add:* and I have therefore added as defendants those persons who were not already parties to this action).

YOU ARE REQUIRED TO APPEAR before me to prove your claim, either in person or by an Ontario lawyer acting for you, on (*day*), (*date*), at (*time*), at (*address*). At that time, I shall determine whether any of the parties have a lien, charge or encumbrance on the property and ascertain the amount of those claims and of the plaintiff's claim. (*Where the judgment is for sale without a redemption period, add:* At the same time, I shall settle the conditions of sale and advertisement and make any other necessary arrangements for the sale.)

(*Where the judgment is for sale conditional on proof of a claim by a subsequent encumbrancer, add:* The defendant (*name of subsequent encumbrancer*) has requested a sale of the property. If the defendant fails to attend and prove a claim before me, there will

Form 64P, p.2

not be a sale of the property, and the claims of those who fail to appear before me may be foreclosed.)

IF YOU FAIL TO ATTEND at the time and place set out above, the action will proceed in your absence and without further notice to you and your rights in the property may be foreclosed.

If you are a subsequent encumbrancer and fail to attend and prove your claim at the time and place set out above, you will be treated as disclaiming any lien, charge or encumbrance on the property, the property may be dealt with as if you had no such claim and your claim may be foreclosed.

*(Date)*

*(Signature of referee)*

TO *(Names and addresses of  
defendants named in  
statement of claim)*

Form 64P, p.3

SCHEDULE OF ENCUMBRANCERS

Name of encumbrancer	Nature of encumbrance	Instrument no.	Date of instrument	Date of registration
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## FORM 64Q

## NOTICE TO ADDED DEFENDANT HAVING INTEREST IN EQUITY

(Court file no.)

SUPREME COURT OF ONTARIO  
(or DISTRICT COURT OF ONTARIO)

B E T W E E N:

(name)

Plaintiff

and

(name(s))

Defendant(s)

and

(name(s))

Defendant(s) added  
on the reference

## NOTICE TO ADDED DEFENDANT

An action has been commenced by the plaintiff for the foreclosure (or sale) of the mortgaged property described in the attached schedule. I have been directed by the judgment in this action dated (date) (where the judgment is for sale, insert: to conduct a sale of the property and) to inquire whether any person other than the plaintiff has a lien, charge or encumbrance on the property subsequent to the plaintiff's claim or whether any other person has an interest in the property. It appears that you may have an interest in the property. I have therefore added you as a defendant in this action. A copy of my order and the judgment in the action are attached to this notice.

If you wish to set aside or vary my order adding you as a defendant or the judgment in this action, you must make a motion to the court within ten days after service on you of this notice (or where the defendant is to be served outside Ontario, such further time as the referee directs). If you fail to do so, you will be bound by the judgment and the subsequent steps in this action.

IF YOU WISH AN OPPORTUNITY TO REDEEM the property, you are required to appear before me, either in person or by an Ontario lawyer acting for you, on (day), (date), at (time), at (address).

Form 64Q, p.2

IF YOU FAIL TO ATTEND at the time and place set out above, you may be deemed to submit to an immediate foreclosure of your interest (or an immediate sale of the property) and the action may proceed in your absence and without further notice to you.

(Date)

(Signature of referee)

TO (Names and addresses  
of defendants added on  
reference who appear  
to be interested in  
equity of redemption)

(The description of the mortgaged property in the attached schedule must be the same as in the statement of claim.)



## FORM 65A

## JUDGMENT FOR ADMINISTRATION OF ESTATE

(Court file no.)

(Court)

(Name of judge or officer)

(Day and date judgment  
given)

(Court seal)

(Title of proceeding)

## JUDGMENT

(Recitals in accordance with Form 59B)

1. THIS COURT ORDERS AND ADJUDGES that all necessary inquiries be made, accounts taken, costs assessed and steps taken by the master (or as may be) at (place) for the administration and final winding up of the estate of (name of deceased) and for the adjustment of the rights of all parties interested in the property.

2. THIS COURT ORDERS AND ADJUDGES that any balance found due from the applicant or the respondent(s) to the estate be paid into court to the credit of this proceeding, subject to further order of the court.

3. THIS COURT ORDERS AND ADJUDGES that the property of the estate or such parts of it as the referee directs be sold as the referee directs and that the purchasers pay the purchase money into court to the credit of this proceeding, subject to the order of the court.

4. THIS COURT ORDERS AND ADJUDGES that the referee execute transfers for any party who is a minor.

(Signature of judge or registrar)

## FORM 66A

## JUDGMENT FOR PARTITION OR SALE

(Court file no.)

(Court)

(Name of judge or officer)

(Day and date judgment  
given)

(Court seal)

(Title of proceeding)

## JUDGMENT

(Recitals in accordance with Form 59B)

1. THIS COURT ORDERS AND ADJUDGES that all necessary inquiries be made, accounts taken, costs assessed and steps taken by the master (or as may be) at (place) for the partition or sale, or for the partition of part and sale of the remainder, of the land described in the attached schedule in accordance with the interests of the parties entitled to share in it.

2. THIS COURT ORDERS AND ADJUDGES that the land, or such part of it as the referee thinks fit, be sold under the direction of the referee, free of the claims of encumbrancers, if any, who have consented to the sale, and subject to the claims of encumbrancers who have not consented to the sale, and that the purchaser pay the purchase money into court to the credit of this proceeding, subject to the order of the court.

3. THIS COURT ORDERS AND ADJUDGES that the referee execute a transfer for any party who is a minor.

4. THIS COURT ORDERS AND ADJUDGES that, if the land is partitioned or if part of the land is partitioned and the proceeds of the sale of the remainder are insufficient to pay the costs in full, the unpaid costs be paid by the parties according to their interests in the land (where there are parties who are minors, add: and that the portion of the costs payable by the parties who are minors be a lien on their respective shares, and that the plaintiff (or applicant) pay the costs of their litigation guardian and that those costs be added to the plaintiff's (or applicant's) costs.)

(Signature of judge, officer or  
registrar)

## FORM 68A

## NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

*(General heading)**(Court seal)*

## NOTICE OF APPLICATION FOR JUDICIAL REVIEW

## TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant.  
The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date and at a place to be fixed by the Registrar of the Divisional Court. The applicant requests that this application be heard at *(place where a Divisional Court sitting is scheduled)*.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Registrar

Address of  
Divisional  
Court office Osgoode Hall  
130 Queen Street West  
Toronto, Ontario  
M5H 2N5

TO *(Name and address of  
each respondent)*

## APPLICATION

1. The applicant makes application for: *(State here the precise relief claimed.)*
2. The grounds for the application are: *(Specify the grounds to be argued, including a reference to any statutory provision to be relied on.)*

*(Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service.)*

3. The following documentary evidence will be used at the hearing of the application: *(List the affidavits or other documentary evidence to be relied on.)*

*(Date of issue)*

*(Name, address and telephone number of applicant's solicitor or applicant)*

## FORM 68B

## NOTICE OF LISTING FOR HEARING (JUDICIAL REVIEW)

*(General heading)*

## NOTICE OF LISTING FOR HEARING

THIS APPLICATION FOR JUDICIAL REVIEW HAS BEEN PERFECTED and has been listed for hearing at *(place)*. You may ascertain from my office the approximate date of hearing.

Date \_\_\_\_\_

Signed by \_\_\_\_\_

Registrar of the Divisional  
Court  
Osgoode Hall  
130 Queen Street West  
Toronto, Ontario  
M5H 2N5

965-5548

TO *(Name and address of  
every person listed  
in the certificate  
of perfection)*



## FORM 68C

## ORDER DISMISSING APPLICATION FOR JUDICIAL REVIEW

*(General heading)**(Court seal)*

## ORDER DISMISSING APPLICATION FOR JUDICIAL REVIEW

The applicant has not *(give particulars of applicant's default under rule 68.06)* and has not cured the default, although given notice under rule 68.06 to do so.

1. IT IS ORDERED that this application be dismissed for delay, with costs.

Date \_\_\_\_\_ Signed by \_\_\_\_\_  
Registrar of the Divisional Court

## FORM 69A

## NOTICE OF REMOVAL

*(General heading)*

The respondent requires that this proceeding be removed into the Supreme Court.

*(Date)**(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address of  
applicant's solicitor  
or applicant)*

## NOTE FOR FORMS 70A to 71B

In Forms 70A to 70M and Forms 71A and 71B, "husband" and "wife" may be substituted for the formal designations of the parties (such as "petitioner" and "respondent") where the parties are identified as such in the document.

## FORM 70A

## PETITION FOR DIVORCE

*(General heading)**(Court seal)*

## PETITION FOR DIVORCE

TO THE RESPONDENT

A LEGAL PROCEEDING FOR DIVORCE HAS BEEN COMMENCED AGAINST YOU by the petitioner. The claim made against you appears in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare an answer in Form 70C prescribed by the Rules of Civil Procedure, serve it on the petitioner's lawyer or, where the petitioner does not have a lawyer, serve it on the petitioner, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this petition is served on you, where you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your answer is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing an answer, you may serve and file a notice of intent to defend in Form 70I prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your answer.

If this petition for divorce contains a claim for maintenance, custody of a child, support or division of property, you must serve and file a financial statement in Form 70J prescribed by the Rules of Civil Procedure within the time set out above for serving and filing your answer, whether or not you wish to defend this proceeding. If you serve and file an answer, your financial statement must accompany your answer.

IF YOU FAIL TO SERVE AND FILE AN ANSWER, A DECREE NISI OF DIVORCE MAY BE GRANTED IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, JUDGMENT MAY BE GRANTED AGAINST YOU ON ANY OTHER CLAIM IN THIS PETITION AND YOU MAY LOSE YOUR RIGHT TO MAINTENANCE OR DIVISION OF PROPERTY.

NEITHER SPOUSE IS FREE TO REMARRY until a decree absolute of divorce has been granted.

You may ascertain from the court office where the action is to be tried the approximate date of trial of this proceeding and the date and details of any decree granted.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local registrar  
Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

TO *(Name and address  
of respondent)*

CLAIM

1. The petitioner claims:
  - (a) a decree of divorce from the respondent spouse;
  - (b) *(State the precise relief claimed.)*

GROUND FOR DIVORCE

2. This petition is under the following provision of the *Divorce Act* (Canada):  
*(Refer to the specific subsection or paragraph relied on.)*
3. The particulars of the grounds for the divorce are as follows: *(Set out in separate paragraphs each allegation of material fact relied on to substantiate the grounds for divorce.)*

RECONCILIATION

4. The particulars of the circumstances which may assist the court in ascertaining whether there is a possibility of reconciliation or resumption of cohabitation are as follows: *(Give particulars.)*
5. The following efforts to reconcile have been made:  
*(Give particulars. Where no efforts have been made or where this paragraph is inapplicable, so state.)*

PARTICULARS OF MARRIAGE

*(Where possible, set out the particulars from the marriage certificate.)*

6. Date of marriage \_\_\_\_\_
7. Place of marriage *(municipality and province, state or country)* \_\_\_\_\_
8. Wife's surname before marriage \_\_\_\_\_
9. Wife's surname at birth \_\_\_\_\_
10. Marital status of husband at time of marriage \_\_\_\_\_
11. Marital status of wife at time of marriage \_\_\_\_\_
12. Wife's birthplace *(province, state or country)* \_\_\_\_\_
13. Wife's birth date \_\_\_\_\_
14. Husband's birthplace *(province, state or country)* \_\_\_\_\_
15. Husband's birth date \_\_\_\_\_

16. (a) ☐ A certificate of ☐ my marriage to the respondent

*Check (a) or (b) and complete as required.*

☐ the registration of my marriage

spouse is filed with this petition.

- (b) ☐ I am unable to produce a certificate of my marriage or the registration of my marriage to the respondent because: *(Give reason.)*



Form 70A, p.3

## DOMICILE AND JURISDICTION

17. Petitioner's residence (*municipality and province, state or country*) \_\_\_\_\_
18. Respondent spouse's residence (*municipality and province, state or country*) \_\_\_\_\_
19. The petitioner ceased to cohabit with the respondent spouse on or about (*date*) \_\_\_\_\_.
20. Petitioner's domicile \_\_\_\_\_.
21. Petitioner's domicile has existed since (*date*) \_\_\_\_\_.
22. The petitioner (*or the respondent spouse*) has been ordinarily resident in Ontario for a period of at least one year immediately preceding the filing of this petition and has actually resided in Ontario for at least ten months of that period at (*address*) \_\_\_\_\_.

## AGE AND DISABILITY

23. The following parties are under eighteen years of age:
- | <i>Name(s)</i> | <i>Birth date</i> |
|----------------|-------------------|
|                |                   |
24. The following parties are under some other legal disability:
- | <i>Name(s)</i> | <i>Nature of disability</i> |
|----------------|-----------------------------|
|                |                             |

## CHILDREN

25. The following are all living children of the marriage as defined by the *Divorce Act* (Canada):
- | <i>Name(s)</i> | <i>Birth date</i> |
|----------------|-------------------|
|                |                   |
26. The particulars of the past, present and proposed custody, care, upbringing and education of the children of the marriage are as follows: (*Give particulars.*)
27. The petitioner claims custody of the following children:
- | <i>Name(s)</i> |
|----------------|
|                |
28. The material facts on which the claim for custody is founded are as follows: (*Set out in separate paragraphs each allegation of material fact.*)

OTHER PROCEEDINGS

29. The following are all other proceedings with reference to the marriage or any child of the marriage: *(Where an order for support or maintenance is in arrears, state the amount of arrears as part of the status of proceeding.)*

<i>Court</i>	<i>Court file no.</i>	<i>Nature of proceeding</i>	<i>Status of proceeding</i>
--------------	---------------------------	---------------------------------	---------------------------------

DOMESTIC CONTRACTS AND FINANCIAL ARRANGEMENTS

30. The spouses have entered into the following domestic contracts and other written or oral financial arrangements: *(Indicate whether the agreement or arrangement is now in effect and if there are arrears of payment, state the amount.)*

<i>Date</i>	<i>Nature of agreement or arrangement</i>	<i>Status</i>
-------------	---	---------------

COLLUSION, CONDONATION AND CONNIVANCE

31. There has been no collusion in relation to this petition.

*(Where the petition is under section 3 of the Divorce Act, add:) There has been no condonation of or connivance at the grounds for divorce set out in this petition. (Where there has been condonation or connivance, give particulars and set out the facts relied on to justify a decree of divorce in the circumstances.)*

GROUND FOR CLAIMS OTHER THAN DIVORCE

32. The grounds for the claims in paragraph 1 of this petition, other than a decree of divorce, are as follows: *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claims.)*

PLACE OF TRIAL AND JUDGE

33. The petitioner proposes that this action be tried at *(place)* by a local judge *(or judge)* of the High Court.

Form 70A, p.5

DECLARATION OF PETITIONER

34. I have read and understand this petition. The statements in it are true, to the best of my knowledge, information and belief.

Date \_\_\_\_\_

\_\_\_\_\_  
*Signature of petitioner*

*(Where the petitioner acts in person, set out the petitioner's address for service and telephone number and strike out paragraph 35.)*

Petitioner's \_\_\_\_\_  
address and \_\_\_\_\_  
telephone number \_\_\_\_\_

STATEMENT OF SOLICITOR

35. I, (name), solicitor for the petitioner, certify to this court that I have complied with the requirements of section 7 of the Divorce Act (Canada). *(Where in the circumstances it would clearly not be appropriate to discuss the matters in section 7 with the petitioner, set out the circumstances.)*

Date \_\_\_\_\_

\_\_\_\_\_  
*Signature of solicitor*

*(Date of issue)*

*(Name, address and telephone number of solicitor)*

## FORM 70B

## ADVERTISEMENT

## SUPREME COURT OF ONTARIO

NOTICE TO *(name)*

A petition for divorce (*where applicable, add and for maintenance, custody and maintenance of the child (name), costs and (set out briefly the nature of any other claim made in the petition)*) has been filed by *(name of petitioner)*. You may obtain a copy of the petition by mail from the court office at *(address)*.

If you wish to oppose the petition or seek other relief, you must do so in accordance with the Rules of Civil Procedure. If you fail to serve and file an answer, a divorce may be granted and judgment may be given against you in your absence and without further notice to you.

*(Name and address of solicitor  
or party)*

## FORM 70C

## ANSWER

*(General heading)*

## ANSWER

1. The respondent admits the allegations contained in paragraphs ..... of the petition.
2. The respondent denies the allegations contained in paragraphs ..... of the petition.
3. The respondent has no knowledge in respect of the allegations contained in paragraphs ..... of the petition.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of answer to the petition.)*

*(Date)*

*(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address of  
petitioner's solicitor  
or petitioner)*



## FORM 70D

## REPLY (DIVORCE ACTION)

*(General heading)*

## REPLY

1. The petitioner admits the allegations contained in paragraphs ..... of the answer.
2. The petitioner denies the allegations contained in paragraphs ..... of the answer.
3. The petitioner has no knowledge in respect of the allegations contained in paragraphs ..... of the answer.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of reply to the answer.)*

*(Date)**(Name, address and telephone  
number of petitioner's solicitor  
or petitioner)*

TO *(Name and address of  
respondent's solicitor  
or respondent)*

## FORM 70E

## COUNTERPETITION (AGAINST PARTIES TO MAIN ACTION ONLY)

*(Where the counterpetition includes as a respondent to the counterpetition a person who is not already a party to the main action, use Form 70F.)*

*(Include the counterpetition in the same document as the answer, and entitle the document ANSWER AND COUNTERPETITION. The counterpetition is to follow the last paragraph of the answer. Number the paragraphs in sequence commencing with the number following the number of the last paragraph of the answer.)*

## COUNTERPETITION

The respondent (name if more than one respondent) claims:  
*(State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the counterpetition. Where the respondent counterpetitions for a divorce, include the information required by paragraphs 20 and 21 of Form 70A.*

## DECLARATION OF RESPONDENT

I have read and understand this counterpetition. The statements in it are true, to the best of my knowledge, information and belief.

Date \_\_\_\_\_

\_\_\_\_\_  
*Signature of respondent*

*(Where the respondent acts in person, set out the respondent's address and telephone number and strike out the following paragraph. Where the counterpetition does not include a claim for a divorce, strike out the following paragraph.)*

Respondent's address  
 and telephone number \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

## STATEMENT OF SOLICITOR

I, (name), solicitor for the respondent, certify to this court that I have complied with the requirements of section 7 of the Divorce Act (Canada). *(Where in the circumstances it would clearly not be appropriate to discuss the matters in section 7 with the respondent, set out the circumstances.)*

Date \_\_\_\_\_

\_\_\_\_\_  
*Signature of solicitor*

*(Name, address and telephone number  
 of solicitor)*

## FORM 70F

## COUNTERPETITION

## (AGAINST PETITIONER AND PERSON NOT ALREADY PARTY TO MAIN ACTION)

*(Where all respondents to the counterpetition are already parties to the main action, use Form 70E.)*

*(General heading)*

*(Add a second title of proceeding, as follows:)*

A N D B E T W E E N:

*(name)*

Petitioner by  
counterpetition

*(Court seal)*

and

*(name)*

Respondents to the  
counterpetition

## ANSWER AND COUNTERPETITION

## TO THE RESPONDENTS TO THE COUNTERPETITION

A LEGAL PROCEEDING has been commenced against you by way of a counterpetition in a divorce action in this court.

IF YOU WISH TO DEFEND THIS COUNTERPETITION, you or an Ontario lawyer acting for you must prepare an answer to counterpetition in Form 70G prescribed by the Rules of Civil Procedure, serve it on the petitioner by counterpetition's lawyer or, where the petitioner by counterpetition does not have a lawyer, serve it on the petitioner by counterpetition, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this answer and counterpetition is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your answer is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing an answer, you may serve and file a notice of intent to defend in Form 70I prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your answer.

If this counterpetition contains a claim against you for custody of a child, maintenance, support or division of property, you must, if you have not already done so, serve and file a financial statement in Form 70J prescribed by the Rules of Civil Procedure, within the time set out above for serving and filing your answer to counterpetition, whether or not you wish to defend this counterpetition. If you serve and file

Form 70F, p.2

an answer to counterpetition, your financial statement must accompany it, unless you have already served a financial statement.

IF YOU FAIL TO DEFEND THIS COUNTERPETITION, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_

TO *(Name and address of respondent to the  
counterpetition other than the petitioner)*

AND TO *(Name and address of petitioner's  
solicitor or petitioner)*

*(The counterpetition is to follow the last paragraph of the answer. Number the paragraphs in sequence commencing with the number following the number of the last paragraph of the answer.)*

COUNTERPETITION

The respondent (name if more than one respondent) claims:  
*(State here the precise relief claimed.)*

*(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the counterpetition. Where the respondent counterpetitions for a divorce, include the information required by paragraphs 20 and 21 of Form 70A.)*

DECLARATION OF RESPONDENT

I have read and understand this counterpetition. The statements in it are true, to the best of my knowledge, information and belief.

Date \_\_\_\_\_  
Signature of respondent \_\_\_\_\_

*(Where the respondent acts in person, set out the respondent's address and telephone number and strike out the following paragraph. Where the counterpetition does not include a claim for a divorce, strike out the following paragraph.)*

Respondent's address  
and telephone number \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATEMENT OF SOLICITOR

I, (name), solicitor for the respondent, certify to this court that I have complied with the requirements of section 7 of the Divorce Act (Canada). *(Where in the circumstances it would clearly not be appropriate to discuss the matters in section 7 with the respondent, set out the circumstances.)*

Date \_\_\_\_\_  
Signature of solicitor \_\_\_\_\_

*(Name, address and telephone number of solicitor)*



## FORM 70G

## ANSWER TO COUNTERPETITION

*(General heading, including second title of proceeding, if required)*

*(A petitioner who delivers a reply in the main action must include the answer to counterpetition in the same document as the reply, and the document is to be entitled REPLY AND ANSWER TO COUNTERPETITION. The answer to counterpetition is to follow immediately after the last paragraph of the reply and the paragraphs are to be numbered in sequence commencing with the number following the number of the last paragraph of the reply.)*

## ANSWER TO COUNTERPETITION

1. The petitioner *(or* respondent to the counterpetition) admits the allegations contained in paragraphs ..... of the counterpetition.
2. The petitioner *(or* respondent to the counterpetition) denies the allegations contained in paragraphs ..... of the counterpetition.
3. The petitioner *(or* respondent to the counterpetition) has no knowledge in respect of the allegations contained in paragraphs ..... of the counterpetition.
4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of answer to the counterpetition.)*

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
delivering answer)*

TO *(Name and address of  
respondent's solicitor  
or respondent)*

## FORM 70H

## REPLY TO ANSWER TO COUNTERPETITION

*(General heading, including second title of proceeding, if required)*

## REPLY TO ANSWER TO COUNTERPETITION

1. The respondent *(name if more than one respondent)* admits the allegations contained in paragraphs ..... of the answer to counterpetition.

2. The respondent denies the allegations contained in paragraphs ..... of the answer to counterpetition.

3. The respondent has no knowledge in respect of the allegations contained in paragraphs ..... of the answer to counterpetition.

4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of reply to the answer to counterpetition.)*

*(Date)*

*(Name, address and telephone  
number of respondent's  
solicitor or respondent)*

TO *(Name and address  
of solicitor or  
party to be served)*

## FORM 701

## NOTICE OF INTENT TO DEFEND

*(General heading)*

## NOTICE OF INTENT TO DEFEND

The respondent (or respondent added by counterpetition)  
intends to defend this action.

*(Name, address and telephone  
number of solicitor or party  
serving notice)*

TO *(Name and address  
of solicitor or  
party on whom notice  
is served)*

## FORM 70J

## FINANCIAL STATEMENT

(General heading)

## FINANCIAL STATEMENT

I, (full name of deponent), of the (City, Town, etc.) of (name), in the (County, Regional Municipality, etc.) of (name), MAKE OATH AND SAY (or SOLEMNLY AFFIRM):

1. Particulars of my financial situation and of all my property are accurately set out below, to the best of my knowledge, information and belief.

## ALL INCOME AND MONEY RECEIVED

Include all income and other money received from all sources, whether taxable or not. Show gross amount here and show deductions on page 2. Give current actual amount where known or ascertainable. Where amount cannot be ascertained, give your best estimate. Use weekly, monthly or yearly column as appropriate.

Category	Weekly	Monthly	Yearly
1. Salary or wages			
2. Bonuses			
3. Fees			
4. Commissions			
5. Family allowance			
6. Unemployment insurance			
7. Workmen's compensation			
8. Public assistance			
9. Pension			
10. Dividends			
11. Interest			
12. Rental income			
13. Allowances and support from others			
14. Other (Specify)			
TOTAL	\$	(A) \$	\$

Weekly total \$ \_\_\_\_\_ X 4.33 = (B) \$ \_\_\_\_\_ monthly

Yearly total \$ \_\_\_\_\_ ÷ 12 = (C) \$ \_\_\_\_\_ monthly

GROSS MONTHLY INCOME (A) + (B) + (C) = (D) \$ \_\_\_\_\_

## OTHER BENEFITS

Show all non-monetary benefits from all sources, such as use of a vehicle or room and board, and include such items as insurance or dental plans or other expenses paid on your behalf. Give your best estimate where you cannot ascertain the actual value.

Item	Particulars	Monthly Market Value
	GROSS MONTHLY INCOME AND BENEFITS (D) + (E) = \$	(E) \$

## ACTUAL AND PROPOSED BUDGETS

<p>ACTUAL BUDGET</p> <p>for twelve month period from _____, 19__ to _____, 19__</p> <p>Show actual expenses, or your best estimate where you cannot ascertain actual amount.</p>				<p>PROPOSED BUDGET</p> <p>Show your proposed budget, giving your best estimate where you cannot ascertain actual amount.</p>		
CATEGORY	Weekly	Monthly	Yearly	Weekly	Monthly	Yearly
<u>Housing</u>						
1. Rent				1.		
2. Mortgage				2.		
3. Common expense charges				3.		
4. Water				4.		
5. Electricity				5.		
6. Natural gas				6.		
7. Fuel oil				7.		
8. Telephone				8.		
9. Cable T.V.				9.		
10. Home insurance				10.		
11. Repairs and maintenance				11.		
12. Gardening and snow removal				12.		
13. Other (Specify)				13.		



CATEGORY	ACTUAL BUDGET			PROPOSED BUDGET		
	Weekly	Monthly	Yearly	Weekly	Monthly	Yearly
<u>Food, Toiletries and Sundries</u>						
14. Groceries				14.		
15. Meals outside home				15.		
16. Toiletries and sundries				16.		
17. Grooming				17.		
18. General household supplies				18.		
19. Laundry, dry cleaning				19.		
20. Other ( <i>Specify</i> )				20.		
<u>Clothing</u>						
21. Children				21.		
22. Self				22.		
<u>Transportation</u>						
23. Public transit				23.		
24. Taxis, car pools				24.		
25. Car insurance				25.		
26. Licence				26.		
27. Car maintenance				27.		
28. Gasoline, oil				28.		
29. Parking				29.		
30. Other ( <i>Specify</i> )				30.		
<u>Health and Medical</u>						
31. Doctors, chiropractors				31.		
32. Dentist (regular care)				32.		
33. Orthodontist or special dental care				33.		
34. Insurance premiums				34.		
35. Drugs				35.		
36. Other ( <i>Specify</i> )				36.		

Form 70J, p.4

CATEGORY	ACTUAL BUDGET			PROPOSED BUDGET		
	Weekly	Monthly	Yearly	Weekly	Monthly	Yearly
<u>Deductions from income</u>						
7. Income tax				37.		
8. Canada Pension Plan				38.		
9. Unemployment insurance				39.		
0. Employer pension				40.		
1. Union or other dues				41.		
2. Group insurance				42.		
3. Credit union loan				43.		
4. Credit union savings				44.		
5. Other (Specify)				45.		
<u>Miscellaneous</u>						
6. Life insurance premiums				46.		
7. Tuition fees, books, etc.				47.		
8. Entertainment				48.		
9. Recreation				49.		
0. Vacation				50.		
1. Gifts				51.		
2. Babysitting, day care				52.		
3. Children's allowances				53.		
4. Children's activities				54.		
5. Support payments				55.		
6. Newspapers, periodicals				56.		
7. Alcohol, tobacco				57.		
8. Charities				58.		
9. Income tax (not deducted at source)				59.		
0. Other (Specify)				60.		



## LAND

*Include any interest in land, including leasehold interests and mortgages, whether or not you are registered as owner. Include claims to an interest in land, but do not include claims that you are making against your spouse in this or a related proceeding. Show estimated market value of your interest without deducting encumbrances or costs of disposition, and show encumbrances and costs of disposition under Debts on page 9.*

Nature and Type of Ownership State percentage interest where relevant.	Nature and Address of Property Mark an X in the column at right beside any property you consider to be a family asset.	Estimated Market Value of Your Interest See instructions above.
		TOTAL (N) \$

## GENERAL HOUSEHOLD ITEMS AND VEHICLES

Show estimated market value, not cost of replacement, and do not deduct encumbrances here. Show encumbrances under Debts on page 9.

Item	Particulars <i>Mark an X in the column at right beside any item you consider to be a family asset.</i>	Estimated Market Value of Your Interest <i>See instructions above.</i>
General household contents excluding special items (a) at matrimonial home(s) (b) elsewhere		
Jewellery		
Works of art		
Vehicles and boats		
Other special items		
	TOTAL	(O) \$





Form 70J, p.8

## ACCOUNTS RECEIVABLE

Give particulars of all debts owing to you, whether arising from business or from personal dealings.

Particulars	Amount
	\$
TOTAL	(S) \$

## BUSINESS INTERESTS

Show any interest in an unincorporated business. A controlling interest in an incorporated business may be shown here or under Securities on page 7. Give your best estimate of market value if the business were to be sold on an open market.

Name of Firm or Company	Interest	Estimated Market Value
		\$
	TOTAL	(T) \$

## OTHER PROPERTY

Show other property by categories. Include property of any kind not shown above. Give your best estimate of market value.

Category	Particulars	Estimated Market Value
		\$
	TOTAL	(U) \$



Form 70J, p.10

## SUMMARY OF INCOME AND EXPENSES

Gross monthly income (Amount D from page 1)	\$	_____
Actual monthly budget (Amount I from page 5)	- \$	_____
ACTUAL MONTHLY SURPLUS/DEFICIT	\$	=====

Gross monthly income (Amount D from page 1)	\$	_____
Proposed monthly budget (Amount M from page 5)	- \$	_____
PROPOSED MONTHLY SURPLUS/DEFICIT	\$	=====

## SUMMARY OF ASSETS AND DEBTS

Total assets (Amounts N, O, P, Q, R, S, T and U from pages 6 to 8)	\$	_____
Total debts (Amount V from page 9)	- \$	_____
NET WORTH	\$	=====

2. The name(s) and address(es) of my employer(s) are:

\_\_\_\_\_

\_\_\_\_\_

3. Attached to this affidavit are a copy of my income tax return filed with the Department of National Revenue for the last taxation year, together with all material filed with it, and a copy of any notice of assessment or reassessment that I have received from the Department for that year.

4. I do not anticipate any material changes in the information set out above.

*(Where applicable, substitute:)*

4. I anticipate the following material changes in the information set out above: *(Give particulars.)*

Sworn, etc.

\_\_\_\_\_  
Signature of deponent

## FORM 70K

## WAIVER OF FINANCIAL STATEMENTS

*(General heading)*

## WAIVER OF FINANCIAL STATEMENTS

The petitioner and the respondent waive financial statements in respect of claims made in this action for maintenance or custody under the *Divorce Act*.

<i>(Date)</i>	<i>(Signature of petitioner's solicitor or petitioner)</i>	<i>(Date)</i>	<i>(Signature of respondent's solicitor or respondent)</i>
	<i>(Name, address and telephone number of petitioner's solicitor or petitioner)</i>		<i>(Name, address and telephone number of respondent's solicitor or respondent)</i>

*(Note: Financial statements may not be waived in respect of a claim under the Family Law Reform Act or the Children's Law Reform Act.)*

## FORM 70L

## WAIVER OF RIGHT TO DISPUTE OFFICIAL GUARDIAN'S REPORT

*(General heading)*

## WAIVER

The *(identify party)* waives the right to dispute the Official Guardian's report in this action.

*(Date)*

*(Name, address and telephone  
number of solicitor or party)*



## FORM 70M

## NOTICE OF LISTING FOR TRIAL (UNDEFENDED DIVORCE)

*(General heading)*

## NOTICE OF LISTING FOR TRIAL

An order has been made changing the place of trial of this action from *(place)* to *(place)* *(or transferring the trial of this action from a High Court (or local) judge to a local (or High Court) judge)*.

This action will forthwith be placed on the non-jury trial list at *(place)* before a local *(or High Court)* judge. You may inquire at the office of the local registrar at *(address)*, telephone ....., to ascertain the approximate date of trial.

*(Date)*

*(Name, address and telephone number  
of solicitor or party giving notice)*

TO *(Name and address of solicitor  
or party receiving notice)*

FORM 70N  
DECREE NISI

(Court file no.)

SUPREME COURT OF ONTARIO

(Name of judge)

(Day and date judgment given)

B E T W E E N:

(name)

Petitioner

(Court seal)

and

(name)

Respondent

DECREE NISI

THIS ACTION was heard this day (or heard on (date)), without a jury at (place), in the presence of counsel for all parties (or counsel for (identify parties), no one appearing for (identify party), although properly served as appears from (indicate proof of service)).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of counsel for the parties,

(Where the decree may be made absolute in less than three months but is not made absolute at trial, add: and since the court is of the opinion that by reason of special circumstances it would be in the public interest for the decree to be made absolute after the expiration of (period of time) from the date of this decree, and the parties have agreed and undertaken that no appeal will be taken from this decree,)

1. THIS COURT DECREES AND ADJUDGES that the petitioner (name), whose marriage to the respondent (name) was solemnized at (place) on (date), be divorced from the respondent unless sufficient cause is shown to this court within (period of time) from the date of this decree why a decree absolute should not be granted.

2. THIS COURT ORDERS AND ADJUDGES that (set out any further relief granted by the court).

Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_

THE SPOUSES ARE NOT FREE TO REMARRY until a decree absolute has been granted by the court after a motion has been made to the court.

## FORM 700

## REGISTRAR'S CERTIFICATE (DIVORCE)

*(General heading)**(Court seal)*

## REGISTRAR'S CERTIFICATE

The local registrar at *(place)* certifies to the court that:

1. The searches required by subrule 70.26(4) have been made and the results are as follows:

- (a) ☐ no appeal from the granting of the decree *nisi* of divorce has been filed;
- ☐ an appeal from the granting of the decree *nisi* of divorce has been
- ☐ dismissed;
- ☐ abandoned;
- (b) ☐ no order has been made extending the time for appealing from the decree *nisi* of divorce;
- ☐ an order was made extending the time for appealing from the decree *nisi* of divorce, but the time has now expired;
- (c) ☐ no notice of motion to show cause why the decree *nisi* of divorce should not be made absolute has been filed.
- ☐ a motion to show cause why the decree *nisi* of divorce should not be made absolute was
- ☐ dismissed.
- ☐ abandoned.
- ☐ disposed of as follows: *(Give particulars.)*

2. The motion for a decree absolute in this action

- ☐ is in compliance with rule 70.26.
- ☐ is not in compliance with rule 70.26. *(Give particulars.)*

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrar

## FORM 70P

## DECREE ABSOLUTE AT TRIAL

(Court file no.)

SUPREME COURT OF ONTARIO

(Name of judge)

(Day and date judgment  
given)

B E T W E E N:

(name)

(Court seal)

Petitioner

and

(name)

Respondent

## DECREE ABSOLUTE

THIS ACTION was heard this day (*or heard on (date)*) without a jury, at (*place*), in the presence of counsel for all parties (*or counsel for (identify parties)*), no one appearing for (*identify party*), although properly served as appears from (*indicate proof of service*)).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of counsel for the parties, this court has granted a decree *nisi*. The parties have agreed and undertaken that no appeal will be taken from the decree *nisi*, and the court is of the opinion that by reason of special circumstances it would be in the public interest for a decree absolute to be granted at this trial.

1. THIS COURT DECREES AND ADJUDGES that the petitioner (*name*), whose marriage to the respondent (*name*), was solemnized at (*place*), on (*place*), on (*date*), is divorced from the respondent.

2. THIS COURT ORDERS AND ADJUDGES that (*set out any further relief granted by the court*).

Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_

FORM 70Q  
DECREE ABSOLUTE

(Court file no.)

SUPREME COURT OF ONTARIO

(Name of judge)

(Day and date judgment given)

(name)

(Court seal)

Petitioner

and

(name)

Respondent

DECREE ABSOLUTE

On motion of (*identify moving party*) for a decree absolute, this court having granted a decree *nisi* in which it was decreed and adjudged that the petitioner be divorced from the respondent spouse unless sufficient cause was shown to this court within (*time period*) from the date of the decree *nisi* why a decree absolute should not be granted, and since no such cause has been shown,

1. THIS COURT DECREES AND ADJUDGES that the decree *nisi* granted in this action on (*date*) is made absolute and that the petitioner (*name*) whose marriage to the respondent (*name*) was solemnized at (*place*), on (*date*), is divorced from the respondent.

Signed by \_\_\_\_\_  
Local registrar

Address of  
court office \_\_\_\_\_  
\_\_\_\_\_



## FORM 71A

## NOTICE TO FILE FINANCIAL STATEMENT

*(The body of this form may be incorporated in the first page of an originating process.)*

*(General heading)*

## NOTICE TO FILE FINANCIAL STATEMENT

TO *(name of respondent or defendant)*

In this proceeding a claim has been made against you for custody *(or support, variation of support or division of property)*.

YOU ARE REQUIRED, WHETHER OR NOT YOU DEFEND THIS PROCEEDING, to serve and file a financial statement in Form 70J prescribed by the Rules of Civil Procedure. Your financial statement must accompany your responding document if you defend this proceeding and must be served and filed in any event within the time for delivering your responding document after the originating process in this proceeding was served on you.

If you fail to serve and file a financial statement as required, an order may be made, without further notice, to compel you to file a financial statement.

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
serving notice)*

TO *(Name and address of  
solicitor or party  
receiving notice)*

## FORM 71B

## NOTICE OF APPEAL TO DISTRICT COURT

(Court file no.)

## DISTRICT COURT OF ONTARIO

B E T W E E N:

(name)

Applicant (in Provincial Court)  
(Appellant) (or (Respondent))

and

(name)

Respondent (in Provincial Court)  
(Respondent) (or (Appellant))

## NOTICE OF APPEAL

THE (identify party) APPEALS to the District Court at (place where appeal is to be heard) from the order (or decision) of (name of judge) dated (date) (where necessary give particulars sufficient to identify the order or decision appealed from).

THE APPELLANT ASKS that the order (or decision) be set aside and that an order be made as follows (or that the order be varied as follows, or as may be): (Set out briefly the relief sought).

THE GROUNDS OF APPEAL are as follows: (Set out briefly the grounds of appeal.)

(In a Family Law Reform Act appeal, add the following paragraph:)

You or an Ontario lawyer acting for you must prepare the respondent's appeal record required by rule 71.09 of the Rules of Civil Procedure, file it with the local registrar of this court and serve it on every other party to the appeal at least three days before the hearing of the appeal.

You may ascertain the approximate hearing date of this appeal from the local registrar at (address), telephone .....

(Date)

(Name, address and telephone  
number of appellant's solicitor  
or appellant)

TO (Name and address of  
respondent's solicitor  
or respondent)

## FORM 71C

## WARRANT FOR ARREST (FAMILY LAW)

(Court file no.)

(Court)

(Name of judge)

(Day and date)

(Court seal)

(Title of proceeding)

## WARRANT FOR ARREST

TO ALL SHERIFFS and other peace officers in Ontario  
AND TO the officers of all correctional institutions in Ontario

WHEREAS an order for support (or an application for support) under the *Family Law Reform Act* has been made against (name), of (address) (where applicable add and he (or she) has been served with the originating process in the proceeding),

AND WHEREAS it appears that (name) is about to leave Ontario with intent to evade his (or her) obligations under the *Family Law Reform Act*,

YOU ARE ORDERED TO ARREST and bring (name) before the court to be dealt with according to law, and if the court is not then sitting or if he (or she) cannot be brought forthwith before the court, you are ordered to deliver him (or her) to a provincial correctional institution or other secure facility, to be admitted and detained there until he (or she) can be brought before the court.

(Signature of judge)

## FORM 71D

## RECOGNIZANCE

*(General heading)*

## RECOGNIZANCE

I, *(full name)*, of *(address)*, acknowledge that I am indebted to Her Majesty the Queen in the amount of \$....., to be collected from me in any manner that an order for the payment of money may be enforced, if I fail *(where the person enters into the recognizance as surety for another person, substitute if (name) fails)* to abide by any of the following conditions:

1. That until *(date)* (or until the court orders otherwise) I shall not *(where the person enters into the recognizance as a surety, substitute (name) shall not)*,

*(Insert, where applicable:)*

- (a) enter on the premises at *(municipal address)*;
- (b) speak to, telephone, write to or otherwise communicate with *(name)*;
- (c) *(include any other terms)*.

Date \_\_\_\_\_ Signature \_\_\_\_\_

This recognizance was entered into before me in accordance with the order of the court made on *(date)*.

Date \_\_\_\_\_ Signature \_\_\_\_\_  
Local registrar (or as  
may be)

## FORM 70L

## WAIVER OF RIGHT TO DISPUTE OFFICIAL GUARDIAN'S REPORT

*(General heading)*

## WAIVER

The *(identify party)* waives the right to dispute the Official Guardian's report in this action.

*(Date)*

*(Name, address and telephone  
number of solicitor or party)*



## FORM 73A

## NOTICE OF PAYMENT INTO COURT

*(General heading)*

## NOTICE OF PAYMENT INTO COURT

The *(identify party)* paid into court on *(date)* the sum of \$..... under the offer to settle *(or acceptance of offer)* dated *(date)*.

*(Date)*

*(Name, address and telephone  
number of solicitor or party  
giving notice)*

TO *(Name and address of solicitor  
or party receiving notice)*

## FORM 73B

## AFFIDAVIT (MOTION FOR PAYMENT OUT OF COURT)

*(General heading)*

## AFFIDAVIT

I, *(full name of deponent)* of the *(City, Town, etc.)*  
of ....., in the *(County, Regional Municipality, etc.)* of  
....., *(where the deponent is a party or the solicitor,  
officer, director, member or employee of a party, set out the  
deponent's capacity)*, MAKE OATH AND SAY *(or AFFIRM)*:

1. This affidavit is filed in support of a motion for payment out of court of money belonging to *(name of person under disability)*, of *(address)*, who is *(state the nature of the disability)* and who was born on *(date)*.

2. I am *(state the deponent's connection with the person under disability)*.

3. The Accountant *(or local registrar at (place))* has informed me that the sum of \$....., including interest accrued to *(date)*, is in court. There has been previously paid out the sum of \$..... on *(date)* *(or as may be)*.

4. It is proposed that the sum of \$..... be paid out of court to *(name)* for the following purpose: *(Give particulars.)*

5. I believe that this expenditure is justified for the following reasons: *(Give particulars.)*

Sworn, *etc.*

## FORM 73C

## STOP ORDER

(Court file no.)

(Court)

(Name of judge or officer)

(Day and date order  
made)

(Court seal)

(Title of proceeding)

## ORDER

(Recitals in accordance with Form 59A or 59B, followed by:) the (identify applicant or moving party) having undertaken by counsel to be bound by any order this court makes in respect of costs or damages caused by this order,

1. THIS COURT ORDERS that all money and securities held by the Accountant (or local registrar at (place)) in this proceeding now or in the future, together with any interest, to which (identify party) is or becomes entitled shall not be dealt with except on notice to (identify applicant or moving party).

(Signature of judge or officer)

**TARIFF A**  
**Solicitors' Fees and Disbursements in**  
**Supreme Court and District Court**  
**Allowable Under Rule 58.06**

**PART I – SOLICITORS' FEES**

<i>Item</i>	<i>Amount</i>
1. Pleadings, up to .....	\$100
This item includes all services, except motions, up to and including delivery of pleadings.	
Subject to increase, in the discretion of the assessment officer, in cases involving \$25,000 or less, up to .....	\$200
and in cases involving more than \$25,000, up to .....	\$350
2. Financial statements, up to .....	\$100
An increased fee may be allowed in the discretion of the assessment officer.	
3. Discovery of documents, up to .....	\$100
This item includes affidavits of documents, requests to inspect, production for inspection and inspection.	
An increased fee may be allowed in the discretion of the assessment officer.	
4. Drawing and settling issues on a special case .....	\$ 75
Subject to increase, in the discretion of the assessment officer, up to .....	\$350
5. Setting down for trial .....	\$ 30
6. Pre-motion conference .....	\$ 75
This item includes preparation and counsel fee.	
An increased fee and a fee to junior counsel may be allowed in the discretion of the assessment officer.	
7. Motion, up to .....	\$ 75
This item includes notice of motion, affidavits, motion record, factum, preparation, counsel fee, and settling, signing and entering the order.	
An increased fee and a fee to junior counsel may be allowed in the discretion of the assessment officer.	
8. Application, up to .....	\$200
This item includes all preliminary steps, notice of application, affidavits, correspondence, application record, factum, preparation, counsel fee on hearing or settlement and attendance to hear judgment.	

<i>Item</i>	<i>Amount</i>
An increased fee and a fee to junior counsel may be allowed in the discretion of the assessment officer.	
9. Examination, up to .....	\$100
This item applies to each oral examination out of court, including preliminary steps, preparation and counsel fee, except an examination in aid of execution (item 18).	
Subject to increase, in the discretion of the assessment officer, in cases involving \$25,000 or less, up to .....	\$150
In cases involving more than \$25,000, an increased fee may be allowed in the discretion of the assessment officer.	
10. Pre-trial conference .....	\$ 75
This item includes preparation, counsel fee and preparation of memorandum and order.	
An increased fee and a fee to junior counsel may be allowed in the discretion of the assessment officer.	
11. Notice or offer .....	\$ 35
This item applies to each notice, including offer to settle, offer to contribute, notice of acceptance, notice of withdrawal of offer, request to admit, response to request to admit and notice of payment into court.	
An increased fee may be allowed in the discretion of the assessment officer.	
12. Preparation for trial, up to .....	\$350
This item includes correspondence, brief at trial, summoning witnesses and counsel fee on settlement.	
An increased fee may be allowed in the discretion of the assessment officer.	
13. Trial	
This item includes counsel fee, written argument and attendance to hear judgment.	
The fee to be allowed is in the discretion of the assessment officer. A fee to junior counsel may be allowed in the discretion of the assessment officer.	
14. Order	
To the party having carriage .....	\$ 35
To other parties .....	\$ 15
This item includes settling, signing and entering an order, whether obtained on default or otherwise, where not included in item 7 or 10.	
Subject to increase, in the discretion of the assessment officer, up to	\$100
15. (a) Appeal to an appellate court	



<i>Item</i>	<i>Amount</i>
This item includes all preliminary steps, notices, appeal book, factum, preparation, counsel fee on a motion for leave to appeal, counsel fee on appeal and attendance to hear judgment. The fee to be allowed is in the discretion of the assessment officer. A fee to junior counsel may be allowed in the discretion of the assessment officer.	
(b) Appeal to a judge of the High Court or District Court .....	\$ 75
This item includes all preliminary steps, notices, appeal record, factum, preparation, counsel fee and attendance to hear judgment. Subject to increase, in the discretion of the assessment officer, in cases involving \$25,000 or less up to .....	\$150
In cases involving more than \$25,000, an increased fee may be allowed in the discretion of the assessment officer.	
16. Reference	
This item includes all preliminary steps, notices, affidavits, appointments, attendances, correspondence, preparation, counsel fee on reference and preparing, settling, signing and confirming the report. The fee to be allowed is in the discretion of the assessment officer. In a sale action, additional fees may be allowed in the discretion of the assessment officer for arranging for a private sale or a sale by tender or for preparation of conditions of sale and the advertisement, arranging for advertising and for an auctioneer, conducting the sale, arranging for payment of the purchase price and for the preparation of a transfer where one is executed.	
17. Issuing or renewing a writ of execution or notice of garnishment .....	\$ 15
18. Examination in aid of execution .....	\$ 50
Subject to increase, in the discretion of the assessment officer, in cases involving \$25,000 or less, up to .....	\$ 75
In cases involving more than \$25,000, an increased fee may be allowed in the discretion of the assessment officer.	

## NOTES:

1. Where for any reason the services covered by an item were not completed, the fee may be reduced by the assessment officer.
2. Any item of a counterclaim, crossclaim or third party claim may be assessed as in a separate action and items common to the main action and a counterclaim, crossclaim or third party claim may be apportioned where appropriate.

**PART II – DISBURSEMENTS**

19. Attendance money actually paid to a witness who is entitled to attendance money, to be calculated as follows:
  1. Attendance allowance for each day of necessary attendance ..... \$ 50

<i>Item</i>	<i>Amount</i>
2. Travel allowance, where the hearing or examination is held, <ul style="list-style-type: none"> <li>(a) in a city or town in which the witness resides, \$3.00 for each day of necessary attendance;</li> <li>(b) within 300 kilometres of where the witness resides, 24¢ a kilometre each way between his or her residence and the place of hearing or examination;</li> <li>(c) more than 300 kilometres from where the witness resides, the minimum return air fare plus 24¢ a kilometre each way from his or her residence to the airport and from the airport to the place of hearing or examination.</li> </ul>	
3. Overnight accommodation and meal allowance, where the witness resides elsewhere than the place of hearing or examination and is required to remain overnight, for each overnight stay . . . .	\$ 75
20. Fees or expenses actually paid to a court, court reporter, official examiner or sheriff under the regulations under the <i>Administration of Justice Act</i> .	
21. For service or attempted service of a document, <ul style="list-style-type: none"> <li>(a) in Ontario, the amount actually paid, not exceeding the fee payable to a sheriff under the regulations under the <i>Administration of Justice Act</i>;</li> <li>(b) outside Ontario, a reasonable amount;</li> <li>(c) that was ordered to be served by publication, a reasonable amount.</li> </ul>	
22. For an examination and transcript of evidence taken on the examination, the amount actually paid, not exceeding the fee payable to an official examiner under the regulations under the <i>Administration of Justice Act</i> .	
23. For the preparation of a plan, model, videotape, film or photograph reasonably necessary for the conduct of the proceeding, a reasonable amount.	
24. For experts' reports that were supplied to the other parties as required by the <i>Evidence Act</i> or these rules and that were reasonably necessary for the conduct of the proceeding, a reasonable amount.	
25. The cost of the investigation and report of the Official Guardian.	
26. For an expert who gives opinion evidence at the hearing or whose attendance was reasonably necessary at the hearing, a reasonable amount not exceeding \$350 a day, subject to increase in the discretion of the assessment officer.	
27. For an interpreter for services at the hearing or on an examination, a reasonable amount not exceeding \$100 a day, subject to increase in the discretion of the assessment officer.	

<i>Item</i>	<i>Amount</i>
28. Where ordered by the presiding judge or officer, such travelling and accommodation expenses incurred by a party as, in the discretion of the assessment officer, appear reasonable.	
29. For copies of any documents or authorities prepared for or by a party for the use of the court and supplied to the opposite party, a reasonable amount.	
30. For copies of records, appeal books and factums, a reasonable amount.	
31. The cost of certified copies of documents such as orders, birth, marriage, and death certificates, abstracts of title, deeds, mortgages and other registered documents where reasonably necessary for the conduct of the proceeding.	
32. The cost of transcripts of proceedings of courts or tribunals, (a) where required by the court or the rules; or (b) where reasonably necessary for the conduct of the proceeding.	
33. Where ordered by the presiding judge or officer, for any other disbursement reasonably necessary for the conduct of the proceeding, a reasonable amount in the discretion of the assessment officer.	

**TARIFF B**  
**Solicitors' Fees in**  
**Uncontested Divorce Actions**  
**Allowed under Rule 70.30**

<i>Item</i>	<i>Amount</i>
1. Pleadings, up to .....	\$ 60
2. Financial statements, up to .....	\$ 50
3. Discovery of documents, up to .....	\$ 40
4. Examination, up to .....	\$ 75
This item applies to each oral examination out of court, except an examination for use on a motion, including preliminary steps, preparation and counsel fee.	
5. Uncontested motion, up to .....	\$ 20
This item applies to each uncontested motion before trial, including preliminary steps, affidavits, preparation, counsel fee and order.	
6. Contested motion, up to .....	\$ 75
This item applies to each contested motion before trial, including preliminary steps, affidavits, cross-examination, preparation, counsel fee and order.	
7. Counsel fee on pre-trial conference, up to .....	\$ 20
8. Counsel fee at trial, including preparation,	
(a) where the evidence is presented by affidavit, up to .....	\$ 75
(b) where the evidence is presented orally, up to .....	\$100
9. Settling, signing and entering decree nisi, up to .....	\$ 20
10. Motion for decree absolute, including preparation, counsel fee and order, up to .....	\$ 20







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